

## SIGNATURE PAGE

I, DR. ALEX SPEARS, have read the continuation of my deposition which was taken on Tuesday, April 30, 1991 and Wednesday, May 1, 1991 in the case of Ierardi v. Lorillard, Inc., et al., Civil Action No. 90-7049, (United States District Court, Eastern District of Pennsylvania), and request that the following changes (if any) be made:

PAGE	LINE	SHOULD READ
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\_\_\_\_\_  
DR. ALEX SPEARS

Sworn to and subscribed to before me, this the \_\_\_\_\_  
day of \_\_\_\_\_, 1991.

\_\_\_\_\_  
Notary Public

My Commission expires:

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CONFIDENTIAL: MINNESOTA TOBACCO LITIGATION

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3  
4  
5 PETER IERARDI, and  
ANGELA IERARDI, his wife,

CIVIL ACTION NO. 90-7049

6 Plaintiffs

7  
8 Vs.

CONTINUATION OF THE  
DEPOSITION OF  
DR. ALEX SPEARS

9 LORILLARD, INC., et al.,  
10 Defendants

11  
12  
13 On Tuesday, April 30th, 1991 commencing at 2:05 p.m. and  
14 and continuing on Wednesday, May 1, 1991, commencing at  
15 8:10 a.m., the continuation of the deposition of  
16 DR. ALEX SPEARS was taken in the Law Offices of Brooks,  
17 Pierce, McLendon, Humphrey and Leonard, 230 N. Elm Street,  
18 Greensboro, North Carolina, before YVONNE D. HORNE,  
19 Registered Professional Reporter and Notary Public in and  
20 for the County of Forsyth, State of North Carolina.

21 YVONNE D. HORNE  
22 Registered Professional Reporter

23  
24  
25  
89749049

## A P P E A R A N C E S

For the Plaintiffs: THOMAS F. JOHNSON, ESQUIRE  
DANIEL G. CHILDS, ESQUIRE  
Johnson and Childs  
1632 Pine Street  
Philadelphia, Pa. 19103

HOWELL ROSENBERG, ESQUIRE  
230 S. Broad Street  
Philadelphia, Pa. 19102

For the Defendant  
Lorillard: WILLIAM S. OHLEMEYER, ESQUIRE  
DAVID HARDY, ESQUIRE  
Shook, Hardy & Bacon  
One Kansas City Place  
1200 Main Street  
Kansas City, Missouri 64105

FRANKLIN POUL, ESQUIRE  
Wolf, Block, Schorr and Solis-Cohen  
Twelfth Floor Packard Building  
Philadelphia, Pa. 19102

For the Defendant  
Hollingsworth & Vose: ANDREW J. McELANEY, JR., ESQUIRE  
Hutter, McClennen & Fish  
One International Place  
Boston, Mass. 02110

KENNETH C. FRAZIER, ESQUIRE  
Drinker Biddle & Reath  
1100 Philadelphia National  
Bank Bldg.  
Philadelphia, Pa. 19107

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of Mr. Johnson

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1 MR. OHLEMEYER: We can agree he is still under  
2 oath.

3 Mr. Johnson. I received a letter sent to me 4:52 p.m.  
4 on the 26th, the cover sheet dated 4/25/91, the letter  
5 itself dated 4/24/91. I'd point out just for the future  
6 that anything you send me, you should copy the Wolf Block  
7 office; they're our Philadelphia counsel, as you know.

8 The letter purports to describe the procedure you  
9 intend to follow for taking the deposition and quite  
10 frankly, I've never seen a situation or procedure like  
11 this. I thought maybe you guys could explain to me what you  
12 intend to do. As I told you, informally, Dr. Spears is  
13 available today probably until six o'clock. He's available  
14 as soon as you'd like to start tomorrow morning until close  
15 to 12:00 tomorrow and I'm just confused -- I'd just like to  
16 get some understanding before we start as to what all this  
17 means.

18 MR. JOHNSON: Sure. Bill, I'm sorry if the dates  
19 were inconsistent. You're absolutely right that it was sent  
20 to you on Friday afternoon, and I sent it to you because  
21 there had been a number of conversations between various  
22 lawyers on the defense side and on the plaintiff's side and  
23 I wanted you to understand what we planned to do. As you  
24 know, we filed four 30 (b) (6) notices in this case, and I  
25 understand that you advised Mr. Rosenberg on Wednesday of

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1 last week that Dr. Spears would be your 30 (b) (6) witness.  
2 As it must be apparent to everybody, you initially objected  
3 to having to produce any 30 (b) (6) witness, and the Court  
4 has rejected your request for protective order on that  
5 basis. And we were planning on coming down here anyway to  
6 see Mr. Bohlken and you told us you'd make Dr. Spears  
7 available even before we knew that he would be your 30 (b)  
8 (6) witness. Now, we -- since we're -- since the deposition  
9 of Lorillard which is really what we are talking about here  
10 and the 30 (b) (6) witness is a deposition of a party, it  
11 will take awhile and I don't think we can complete it by  
12 tomorrow at noon. As I said to you in my letter, we  
13 expected that there might very well be as many as four  
14 different spokesmen, one for each area under 30 (b) (6) and  
15 we find it a little surprising that you would designate  
16 Dr. Spears in one area where he may know nothing, but that,  
17 of course, choice is yours as the rule says and the  
18 Judge has ruled. So what we propose to do is this: We  
19 expect to begin questioning Dr. Spears right now. We asked  
20 you in the letter and you've not told us whether or not  
21 everything Dr. Spears said last time would bind the  
22 corporation. Now, can you tell me the answer to that now?

23 MR. OHLEMEYER: I can tell you this  
24 Mr. Johnson: That you asked Lorillard through an  
25 interrogatory to identify the current employees who were

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1 most knowledgeable in specific subject matters. Those  
2 subject matters closely parallel the four notice of  
3 depositions you served on Lorillard pursuant to Rule 30 (b)  
4 (6) of the Federal Rules of Civil Procedure. When his  
5 examination commenced in Philadelphia on April 4th,  
6 Dr. Spears told you that he is the individual within the  
7 company who is most knowledgeable in the areas set forth in  
8 the interrogatory as I believe it was read to him by  
9 Mr. Rosenberg. I will represent to you that Mr. -- Dr.  
10 Spears is the individual currently employed by Lorillard who  
11 is most knowledgeable in the areas of inquiry set forth in  
12 your 30 (b) (6) notices. You may assume -- and I disagree  
13 with your characterization of the Court's order on the  
14 protective order filed with respect to those notices. As  
15 you will note at Page 4, the Court points out there are  
16 apparently current employees of Lorillard who may have some  
17 knowledge of specific facts or occurrences set forth in your  
18 deposition notices and that the information to which those  
19 individuals are privileged should be made available to you.  
20 I am here to represent to you that Mr. or Dr. Spears'  
21 testimony on the fourth of April, if you asked him all those  
22 same questions today he would give you all the same answers.  
23 He is the person within the company who is the most  
24 knowledgeable about those subject areas; he has told you  
25 what he knows about them, the effect of which is something

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1 you and I and the Judge and anybody else can discuss at some  
2 other time, but I'm not going to tell you that it somehow  
3 binds the corporation. You may assume that he is here today  
4 as he was on April fourth speaking on behalf of the company  
5 as the individual at Lorillard who knows the most about  
6 these subject matters. What I have particular questions  
7 about is the procedure whereby you intend to conduct some  
8 sort of seriatim examination of Dr. Spears involving  
9 multiple lawyers on multiple subject matters and that is  
10 what I'd like you to explain to me. The rest of the stuff  
11 is a bunch of legal conclusions, legal effects that you and  
12 I can argue about; I don't want to waste the witness's time.  
13 I am telling you he is the representative for the company on  
14 those areas. He knows more about it than anybody else in  
15 the company today. What you choose to make of that is  
16 entirely up to you.

17 MR. JOHNSON: Well, I appreciate your comments,  
18 Bill. The -- however I want to be sure I understand  
19 something. We've noticed Lorillard's deposition under  
20 Rule 30 (b) (6).

21 MR. OHLEMEYER: You have --.

22 MR. JOHNSON: Now, we've noticed his deposition.  
23 As I understand --

24 MR. OHLEMEYER: And those depositions --

25 MR. JOHNSON: Mr. Ohlemeyer, I didn't interrupt

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1 you. Don't interrupt me.

2 MR. OHLEMEYER: Okay. I apologize.

3 MR. JOHNSON: Now it's my understanding that last  
4 week, you told Mr. Rosenberg who is on this case with me  
5 that Dr. Spears would be your designated witness under 30  
6 (b) (6). Is Dr. Spears your designated witness under 30 (b)  
7 (6)?

8 MR. OHLEMEYER: Dr. Spears -- you and I have a  
9 basic disagreement about what the language of Rule 30 (b)  
10 (6) says and what the language of your deposition notice  
11 says. You have asked us to produce the person in the  
12 organization most knowledgeable in a number of areas. This  
13 is that person. The quicker we start asking him questions,  
14 the sooner we can conclude it. What I want to know is, what  
15 do you intend to do by way of this seriatim examination  
16 involving the multiple lawyers on multiple subjects? Once  
17 you can tell me what that is, then we can begin. Quite  
18 frankly, it's unique. It's novel. I've never seen it. I'd  
19 like you to explain to me what it is you intend to do.

20 MR. JOHNSON: Sure. We filed a notice of  
21 deposition on Defendant Lorillard under Rule 30 (b) (6). It  
22 is -- I want to know from you whether or not you are now --  
23 based on the Court's order, producing this witness pursuant  
24 to that notice of deposition. I realize that you objected  
25 to it. I intend by saying what I am about to say though all

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1 your objections are fully preserved. I just want to know  
2 that based on the Court's -- whether based on the Court's  
3 ruling, this witness is now being produced pursuant to our  
4 notice of deposition of the corporation.

5 MR. OHLEMEYER: I have told you that three times.  
6 Yes he is. What I want you to tell me --

7 MR. JOHNSON: Thank you.

8 MR. OHLEMEYER: -- is how you intend to conduct  
9 the examination.

10 MR. JOHNSON: Thank you. Now that I understand  
11 that, how I intend to conduct the deposition is that one of  
12 the 30 (b) (6) notices requests Lorillard to produce a  
13 designated witness on the subject of advertising and if this  
14 is, in fact, that designated witness, I intend to begin  
15 asking him questions on the subject of advertising right  
16 now. When I am completed 30 (b) (6) examination on the  
17 subject of advertising, I or Mr. Rosenberg or Mr. Childs  
18 will begin asking about the subjects of one of the other 30  
19 (b) (6) areas. And while there is certain -- there's a  
20 certain amount of inherent overlap between the subjects  
21 because we are talking about a particular product, we'll  
22 endeavor as best we can to break the questioning into those  
23 areas that are noticed in the different depositions. That's  
24 what we intend to follow. As I told you in my letter, we  
25 had anticipated that there might be four different

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1 depositions and so different attorneys on our side have  
2 prepared different portions of the -- of the case for  
3 purposes of the 30 (b) (6). Now, is this your designated  
4 witness on the issue of advertising?

5 MR. OHLEMEYER: You have asked us for a  
6 representative to testify on the issue of the advertising of  
7 Kent cigarettes between 1952 and 1956.

8 MR. JOHNSON: I have.

9 MR. OHLEMEYER: Dr. Spears is the current  
10 Lorillard employee who is most knowledgeable on that subject  
11 matter. Will you -- are you agreeing that once you conclude  
12 your examination on advertising or will you agree that once  
13 you conclude your quote advertising examination, we will  
14 then move on from that subject to another subject and that  
15 we will not return to that subject. What I want to avoid is  
16 you asking some questions then Mr. Rosenberg asking some  
17 questions then you deciding you have a few more to ask about  
18 a specific topic. I think that -- that sounds fair.

19 MR. JOHNSON: I think that we do not disagree as  
20 to the way in which this is going to be conducted. It will  
21 be my endeavor to ask questions about advertising and  
22 marketing and the other subjects listed under that  
23 particular 30 (b) (6) deposition notice. Mr. Rosenberg will  
24 be covering some of the other 30 (b) (6) areas and it will  
25 be our endeavor not to go over the same ground. I think

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1 that you and I may disagree when it comes to the gray areas.  
2 I mean there are certain areas where -- that are black and  
3 white and there are certain areas that are gray within those  
4 particular areas; for example, if I ask this witness how  
5 much money was spent on advertising, I don't expect  
6 Mr. Rosenberg to ask any questions about how much money  
7 spent on advertising because that is pretty much clearly  
8 within the field of advertising. I think that there are  
9 statements within advertising that relate I think to health  
10 claims and I think the possibility of testing the product  
11 and that's a harder area and you and I may disagree about  
12 whether or not that falls under advertising or falls under  
13 some other area, but as far as possible, it's going to be  
14 our effort to try to segment the questioning within the  
15 areas that are listed under 30 (b) (6) and so I don't think  
16 we really disagree about what we are trying to do. We may  
17 disagree when it comes to a specific question or two.

18 MR. CHLEMEYER: I'd certainly object to any  
19 replowing of the same ground as it were or any inquiry into  
20 the same subject matter on separate examinations. I also  
21 would like to know whether you intend to ask questions that  
22 have already been asked of the witness during his deposition  
23 of April fourth, 1991 in Philadelphia, because quite frankly  
24 it's my position that this information does not need to be  
25 part of this continuing deposition.

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1 MR. JOHNSON: Well, you'll note, Mr. Ohlemeyer,  
2 that in my letter to you, I specifically asked whether or  
3 not the answers he gave at his previous deposition were to  
4 bind the corporation under 30 (b) (6), and I take it that  
5 your answer to that is yes, however, certain of the answers  
6 he gave were answers that were couched or limited by his own  
7 knowledge, and so there may be a need on our part to clarify  
8 the corporation's testimony on certain points. But we have  
9 no particular desire to drag out this deposition to have him  
10 repeat himself, and that's one of the reasons frankly why I  
11 am beginning on an area right now that was scarcely touched  
12 on the last time we met with Dr. Spears.

13 MR. OHLEMEYER: I'm not going to prolong this any  
14 longer. I'm not going to debate with you the legal effect  
15 of any particular answer to any particular question. I am  
16 telling you that if you ask Dr. Spears all of these  
17 questions today that you asked him on April fourth, that his  
18 answer today would be the same that his answer was on April  
19 fourth. He is the person who knows the most about this in  
20 the company. You've asked him the questions; he's given you  
21 the answers. I object to any repetition of the questions  
22 and the material that was inquired about in the April fourth  
23 deposition. Having said that, I am not going to waste  
24 anybody's time. Let's just go through it.

25 MR. JOHNSON: Okay. That's fine.

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1 Yes, the witness is still under oath.

2 You understand that you're still under oath,

3 Dr. Spears?

4 THE WITNESS: Yes, I do.

5

6 EXAMINATION BY MR. JOHNSON:

7 Q. Dr. Spears, between the last time that we met and  
8 today, have you reviewed any information or -- with respect  
9 to Lorillard's advertising during the period of time that  
10 there was asbestos in the Kent Micronite filter?

11 A. No, I haven't.

12 Q. Have you spoken to anyone within the corporation in  
13 an effort to acquire information about advertising of Kent  
14 cigarettes between 1952 and 1956?

15 A. No, I haven't.

16 Q. Have you read the depositions of any witnesses whose  
17 testimony has been taken in this litigation?

18 A. I've read my own deposition.

19 Q. All right. In 1952, how did Kent introduce the --  
20 how did Lorillard introduce the Kent cigarette to the  
21 public?

22 MR. CHELMEYER: Object to the form of the  
23 question.

24 A. I don't know.

25 Q. What media did Lorillard use to announce that it had

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1 a new product?

2 A. I'm not certain I can answer that totally, but I  
3 believe --

4 Q. Well --

5 A. -- I believe written media and television.

6 Q. Did Lorillard use an advertising agency for that  
7 purpose?

8 A. I don't know. Historically, Lorillard has used  
9 advertising agencies but I have no specific knowledge of  
10 that incidence.

11 Q. Are you familiar with the name Young and Rubicam?

12 A. No, I'm not.

13 Q. How much money did Lorillard spend advertising the  
14 Kent cigarette in 1952?

15 A. I don't know.

16 Q. Are you able to tell us how much money Kent -- how  
17 much money Lorillard spent advertising the Kent cigarette in  
18 any of the years from 1953 through 1957?

19 A. No, I'm not.

20 Q. Have you been shown the notice of deposition  
21 concerning advertising and marketing and the scope of the  
22 inquiry listed therein?

23 A. Quite sometime ago, yes.

24 Q. And have you made any effort to acquire any  
25 information within the areas listed in the scope of inquiry

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1 on that notice of deposition?

2 A. I have looked at some of the documents that were  
3 shown to me by attorneys.

4 Q. Do any of those documents concern advertising?

5 A. I have seen some copies of advertising.

6 Q. Now, are you familiar with an individual named Alden  
7 James?

8 A. No, I'm not.

9 Q. Have you ever heard the name before I just uttered  
10 it?

11 A. I don't recall it.

12 Q. Have you ever heard the name Manuel Yell<sup>E</sup>on?

13 A. Yes.

14 Q. How are you acquainted with Mr. Yell<sup>E</sup>on?

15 A. He was chairman of Lorillard in the past.

16 Q. Before becoming -- taking the position of chairman,  
17 did he have any responsibility for advertising with  
18 Lorillard?

19 A. I believe he was in sales.

20 Q. Do you know where Mr. Yellon lives today?

21 A. No, I do not.

22 Q. Does Lorillard have a part of its business that  
23 concerns itself with advertising today?

24 A. I'm sorry. I don't understand the question.

25 Q. Does Lorillard have a department within Lorillard

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1 that concerns itself with advertising?

2 A. Yes.

3 Q. Is that department known as the advertising  
4 department or some other name?

5 A. Brand management and advertising. Yes. Brand  
6 management and advertising.

7 Q. Who is the head of that department?

8 A. Today, Martin -- Martin Orlowski.

9 Q. And is brand management somehow different from  
10 advertising within that department today as best you  
11 understand it?

12 A. Well as I would understand advertising, it would  
13 relate to materials that would be true advertisements, that  
14 is placement of ads, outdoor, newspaper, that sort of thing.  
15 Brand management includes the function of forecasting brand  
16 performance and developing strategies for promotion. Yes, I  
17 consider them complimentary but different activities.

18 Q. Within the brand management and advertising  
19 department at Lorillard today, is there any individual who  
20 concerns himself -- who is responsible for advertising as  
21 opposed to brand management. In other words, are there, in  
22 the organization chart, is there some person underneath the  
23 head of that department who concerns himself with  
24 advertising rather than brand management?

25 A. I'm not sure whether George Telford is that person or

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1 not, but there is a vice president under Orlowski whose  
2 title may include just advertising.

3 Q. Is there anyone in the department of brand management  
4 or advertising who was with Lorillard or its predecessor in  
5 the 1950s?

6 A. No.

7 Q. Who is the person with the most seniority in that  
8 department?

9 A. None of them are very senior. Of the two that I  
10 mentioned, Telford would be senior to Orlowski.

11 Q. And how long has Mr. Telford been with the company?

12 A. I am guessing a little bit, but I think about  
13 15 years.

14 Q. Who was in charge of advertising Kent cigarettes for  
15 Lorillard between 1951 and 1957?

16 A. I'm not sure.

17 Q. Do you have any names whatever -- whatsoever that you  
18 can provide us in response to that question?

19 A. Well, Mr. Gruber was part of the organization at that  
20 time certainly that was involved in the upper management  
21 echelon and held either president's position or -- I would  
22 guess not. I would guess he was in sales or advertising at  
23 that point. Probably sales.

24 Q. And --

25 A. Man by the name of Jordon was head of sales in that

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1 period or was near the top in the sales organization. I'm  
2 not sure exactly where he stood.

3 Q. You mentioned Mr. Bass's name at your previous  
4 deposition.

5 A. Right.

6 Q. Did he have any responsibility for advertising in the  
7 1950s?

8 A. He was in sales.

9 Q. Were the advertising and sales departments united at  
10 that time?

11 A. No. I believe they were separate. Certainly were  
12 separate in the -- in the early 60s.

13 Q. Have you -- strike that.

14 Did Lorillard intend by its advertising to increase  
15 the sales of its product?

16 A. I would presume so.

17 Q. Just so we understand each other and I don't have to  
18 repeat myself every single time, unless I explicitly say to  
19 the contrary, my questions to you will be about the period  
20 between 1952 when the Kent cigarette was first introduced  
21 until the filter was changed in May 1956. Will you be able  
22 to follow my questions?

23 A. Yes. Yes.

24 Q. All right. Was one of Lorillard's objectives in  
25 advertising Kents to introduce a new product to the public?

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1 A. I don't know the objectives but since the brand was  
2 introduced in that period, that would be reasonable.

3 Q. Would one of Lorillard's goals be to meet competition  
4 from other brands?

5 A. I don't know.

6 Q. Would one of Lorillard's goals be to cause people to  
7 switch from the brand of cigarettes they were smoking to  
8 Kents?

9 A. I don't know but that is normally a reason for  
10 advertising.

11 Q. Was one of Lorillard's intentions in advertising in  
12 this period to inspire brand loyalty among Kent smokers?

13 A. I don't know.

14 Q. Was it Lorillard's goal to counter negative publicity  
15 about smoking and health through its advertising?

16 A. Not to my knowledge.

17 Q. Does your last answer mean you don't know or you  
18 think that the answer is no?

19 A. I don't know.

20 Q. Did Lorillard take any precautions to see that its  
21 advertising was truthful?

22 MR. CHLEMEYER: Object to the form of the  
23 question.

24 A. I don't know.

25 Q. Did Lorillard take any precautions to see that its

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1 advertising was scientifically accurate?

2 A. I don't know.

3 Q. Did the persons who were doing the advertising for  
4 Lorillard stay in touch with the research department so that  
5 any statements made in the advertising would have some  
6 scientific basis?

7 A. I don't know if they stayed in touch, no.

8 Q. Was -- strike that.

9 Did Lorillard have one campaign or more than one  
10 campaign between 1952 and 1956 for Kent cigarettes?

11 MR. OHLEMEYER: Object to the form of the  
12 question.

13 A. Define campaign.

14 Q. Do you know what an advertising campaign is?

15 A. Yes.

16 Q. Please explain what your understanding of that term  
17 is.

18 A. A particular theme is what I would presume -- what I  
19 would presume a campaign to be.

20 Q. What themes in advertising did Lorillard pursue with  
21 regard to Kents between 1952 and 1956?

22 A. I've seen advertisements pursuing a low tar theme or  
23 efficient filter.

24 Q. Any other themes?

25 A. That's the one that I recall.

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1 Q. And was it Lorillard's policy that its products would  
2 be honestly marketed?

3 MR. OHLEMEYER: Object to the form of the  
4 question.

5 A. I don't know Lorillard's policy in that period.

6 Q. Did -- with regard to the advertisements that you  
7 have seen, can you estimate for me approximately how many  
8 such advertisements you've looked at?

9 MR. OHLEMEYER: Object to the form of the  
10 question. Instruct him not to answer it.

11 MR. JOHNSON: You instruct him not to answer on  
12 how many advertisements he's looked at.

13 MR. OHLEMEYER: Let me hear the question again.

14 Q. My question was how many advertisements have you  
15 looked at.

16 MR. OHLEMEYER: That's fine, I'm -- what I don't  
17 recall is the witness's testimony about having seen them.

18 Q. He did say that he saw them. I'm sure if you ask one  
19 of your colleagues they will tell you that he did.

20 MR. OHLEMEYER: Go ahead. I'm sorry.

21 Q. How many advertisements have you looked at?

22 A. I don't -- two or three or four.

23 Q. Do you know what period of time they come from?

24 A. I believe they came from the period of time that we  
25 are discussing.

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1 Q. '52, '56?

2 A. '52 to '56.

3 Q. Do you know what magazines they came from?

4 A. No, I don't.

5 Q. Were they magazine advertisements?

6 A. I saw copies of material and I can't tell whether  
7 they were magazine or newspaper. Or at least I don't  
8 remember noticing whether they were magazine or newspaper.

9 Q. Uh-huh. With respect to those advertisements, did  
10 any of those advertisements mention the word asbestos?

11 A. I don't recall that.

12 Q. Did Lorillard have a policy between 1952 and 1956  
13 with regard to the use of the word asbestos in its  
14 advertisements for Kent cigarettes?

15 MR. CHLEMEYER: Object to the form of the  
16 question.

17 A. I have no knowledge of that.

18 Q. Is there any reason that you are aware of why  
19 Lorillard would not use the word asbestos in an  
20 advertisement for Kent cigarettes between 1925 and 1956?

21 A. No.

22 Q. We have already established, have we not, that there  
23 was asbestos in filter for Kent cigarettes in 1952 to 1956,  
24 correct, Doctor?

25 MR. CHLEMEYER: Object to the form of the

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1 question.

2 A. That's correct.

3 Q. And have you seen any documents relating to  
4 advertising or marketing that describe the ingredient or  
5 ingredients in the Kent Micronite filter as a quote, secret  
6 mineral, unquote?

7 MR. FOUL: Secret what? I didn't hear you.

8 MR. JOHNSON: Secret mineral.

9 A. I don't remember that phrase, no.

10 Q. Was it Kent's policy -- pardon me. Strike that.  
11 Was it Lorillard's policy to keep the fact that there  
12 was asbestos in the Kent Micronite filter a secret?

13 MR. OHLEMEYER: Object to the form of the  
14 question.

15 A. I don't know Lorillard's policy at that time.

16 Q. What led Lorillard to decide to market a filter  
17 cigarette?

18 MR. OHLEMEYER: Object to the form of the  
19 question.

20 A. I don't know.

21 Q. Did Lorillard do research to determine whether a  
22 filter cigarette could be successfully marketed before they  
23 introduced it?

24 MR. OHLEMEYER: Object to the form of the  
25 question.

89749072

1 A. Are we referring to market research?

2 Q. Yes.

3 A. I don't know.

4 Q. Was Kent the first filter cigarette introduced by  
5 Lorillard?

6 A. I believe so.

7 Q. Were there other filter cigarettes introduced by  
8 Lorillard's competitors at that time?

9 A. I believe in and around that time, yes. I can't say  
10 exactly at that time, no. I don't know.

11 Q. What filter cigarettes were on the market before the  
12 Kent cigarette was introduced in 1952?

13 A. I think -- I think Parliament maybe and Viceroy come  
14 to mind as two possibilities. I'm not a hundred percent  
15 certain.

16 Q. Were there any filter cigarettes introduced within  
17 two years after Kent was placed on the market by Lorillard's  
18 competitors?

19 A. I don't know.

20 Q. Which portion of the smoking public was the Kent  
21 filter cigarette intended to appeal to?

22 MR. CHLEMEYER: Object to the form of the  
23 question.

24 A. I don't know.

25 Q. Did Lorillard have a particular market in mind when

89749073

1 it introduced the Kent cigarette?

2 MR. OHLEMEYER: Object to the form of the  
3 question.

4 A. I don't know that they had identified a particular  
5 market or had one in mind. I just don't know.

6 Q. Did any scientific or medical reports concerning  
7 cigarette smoking and health play any part in the decision  
8 to introduce and market Kent cigarette?

9 MR. OHLEMEYER: Object to the form of the  
10 question.

11 A. I don't know what -- what played a role in  
12 determining the marketing of Kent cigarettes.

13 Q. Did Lorillard ever inform the public that the Kent  
14 Micronite filter contained asbestos?

15 MR. OHLEMEYER: Object to the form of the  
16 question.

17 A. I don't know, although I have seen publications that  
18 I think I mentioned last time, Chemistry and Industry,  
19 Reader's Digest article, maybe, which contained that kind of  
20 information.

21 Q. Okay. With respect to Reader's Digest, Dr. Spears,  
22 was that article written at the time Kent cigarettes still  
23 contained asbestos or was that after the asbestos had been  
24 removed?

25 MR. OHLEMEYER: Object to the form of the

89749074

1 question.

2 A. I believe it was in 1958 that article appeared, so it  
3 would be after.

4 Q. Now, the article in Chemistry and Industry, can you  
5 tell us when that was written?

6 A. Not a hundred percent sure, but I believe it appeared  
7 in 1954.

8 Q. And was that article initiated by Lorillard?

9 A. I don't remember the authors but the article  
10 certainly describes Kent Micronite filter.

11 Q. Did the authors obtain information from Lorillard in  
12 order to write that article?

13 A. I don't know.

14 Q. Were the authors Lorillard employees?

15 A. I don't know.

16 Q. Can you tell me anything else about the article?

17 MR. OHLEMEYER: Object to the form of the  
18 question. Are you serious?

19 MR. JOHNSON: Very serious.

20 A. Can I tell you anything else about the article?

21 Q. Other than what you've already told us.

22 MR. OHLEMEYER: That's not a fair question,

23 Mr. Johnson. Ask him a question --

24 MR. JOHNSON: All right. I'll strike it.

25 Q. What was it -- did Lorillard want the public to know

89749075

1 that its filter contained asbestos?

2 A. I don't know.

3 Q. Does Lorillard believe that at the time the filter  
4 contained asbestos the public knew that it contained  
5 asbestos?

6 MR. OHLEMEYER: Object to the form of the  
7 question. Mr. Johnson, if you're asking him what he knows,  
8 that's fine. If you are asking him what he contends or what  
9 the company through its attorneys contend about specific  
10 issues in this case, I'm not going to let him answer those  
11 kinds of questions. You're not going to get his contentions  
12 or his opinions. You can ask him what he knows.

13 MR. JOHNSON: The question stands.

14 MR. OHLEMEYER: Can you read the question,  
15 please.

16 (The last question is read by the reporter.)

17 MR. OHLEMEYER: There is no difference in a  
18 belief or a contention. You're asking him for a contention.  
19 I instruct him not to answer.

20 Q. Okay. Can you point to any document generated by  
21 Lorillard to the public that ever mentioned the word  
22 asbestos?

23 MR. OHLEMEYER: Object to the form of the  
24 question.

25 A. No, I can't point to a document.

89743076

1 MR. JOHNSON: I would request production of a  
2 copy of the article from Chemistry And Industry.

3 MR. CHLEMEYER: If it's within our possession,  
4 custody and control, I'll certainly comply.

5 Q. Do you have a copy of the article, Dr. Spears?

6 A. In my possession, no.

7 Q. Where did you last see it?

8 A. In the Journal.

9 Q. In 1954?

10 A. No. Journal is available. Is that the question?

11 Q. Is the Journal available in Lorillard's library?

12 A. I think it is.

13 Q. And the name of the Journal is Chemistry and  
14 Industry?

15 A. That's right.

16 Q. Okay. What is the name of the article as best you  
17 can recall?

18 A. I don't recall the name of the article.

19 Q. And I take it you do not recall --

20 A. I don't recall the authors either, if that's the  
21 question.

22 Q. Okay. How was the name Kent chosen for this  
23 particular brand of cigarettes?

24 A. I presume that it was chosen on the basis of a prior  
25 chairman of Lorillard by the name of Kent.

89743077

1 Q. Whose first name was --

2 MR. OHLEMEYER: Object to the form of the  
3 question.

4 A. I'm not sure that I know.

5 Q. Would that be Herbert Kent?

6 A. Yes, I believe that's correct.

7 Q. I may have been distracted by your use of the term  
8 prior. Herbert Kent was the chairman of Lorillard at the  
9 time that Kent cigarette was introduced, isn't that correct?

10 MR. OHLEMEYER: Object to the form of the  
11 question.

12 A. Yes, I believe he was. Yes.

13 Q. Did Mr. Kent take a special interest in the cigarette  
14 named after him?

15 MR. OHLEMEYER: Object to the form of the  
16 question.

17 A. I don't know.

18 Q. In 1952, was Lorillard in any way restricted by law  
19 or governmental regulation as to what it was permitted to  
20 print on a cigarette pack?

21 MR. OHLEMEYER: Object to the form of the  
22 question.

23 A. I'm not aware of any restrictions.

24 Q. Was Lorillard in any way restricted by law or  
25 regulation as to what it was permitted to print in an

89749078

1 advertisement?

2 MR. OHLEMEYER: Object to the form of the  
3 question.

4 A. I don't know.

5 Q. Between 1952 and 1957, were there laws or regulations  
6 enacted which did place restrictions on what Lorillard was  
7 able to say either on the pack or in advertisements?

8 A. I don't know.

9 Q. Prior to 1966, did Lorillard ever put a warning on a  
10 cigarette package?

11 MR. OHLEMEYER: Object to the form of the  
12 question.

13 A. Not to my knowledge.

14 Q. Prior to 1966, did Lorillard ever put a warning on an  
15 advertisement?

16 MR. OHLEMEYER: Object to the form of the  
17 question.

18 A. I don't know.

19 Q. In 1952 when the Kent cigarette was introduced, did  
20 Lorillard make any special effort to announce the  
21 introduction of this product to the medical profession?

22 MR. OHLEMEYER: Object to the form of the  
23 question.

24 A. I don't recall.

25 Q. Did Lorillard send correspondence to members of the

89749079



1 medical profession announcing that -- the existence of the  
2 Kent cigarette?

3 A. Did who do?

4 Q. Did Lorillard or anyone under its control?

5 A. I don't know.

6 Q. Did Lorillard attend at about the time the Kent  
7 cigarette was introduced, the American -- the convention of  
8 the American Medical Association and demonstrate the  
9 Micronite filter?

10 MR. OHLEMEYER: Object to the form of the  
11 question.

12 A. I don't know, although I vaguely remember seeing  
13 something that was suggestive of that.

14 Q. Let me show you two letters that have been produced  
15 to me by your counsel, both dated March 12th, 1952, from  
16 apparently Dr. Parmele's desk, addressed, Dear Doctor.

17 (Documents to the witness by Mr. Johnson.)

18 MR. FRAZIER: Do you need that to do your  
19 examination?

20 (Document from Mr. McElaney to Mr. Johnson then  
21 to the witness.)

22 Q. Why would Lorillard want to send letters to members  
23 of the medical profession announcing the introduction of  
24 Kent cigarettes?

25 MR. OHLEMEYER: Could you repeat that, please?

89749080

1 Q. Why would Lorillard want to send letters to members  
2 of the medical profession announcing the introduction of  
3 Kent cigarettes?

4 MR. OHLEMEYER: Object to the form of the  
5 question.

6 A. Well, I don't know, other than conjecture; conjecture  
7 being that they thought they had some significant --  
8 something significant in the Kent cigarette that would be of  
9 interest to the medical profession.

10 Q. And the something in the Kent cigarette was actually  
11 the filter in the Kent cigarette, correct?

12 MR. OHLEMEYER: Object to the form of the  
13 question.

14 A. As I say, I can only conjecture, but, yes, I would  
15 think the filter.

16 Q. Did Lorillard want doctors to recommend the Kent  
17 cigarette to their patients?

18 MR. OHLEMEYER: Object to the form of the  
19 question.

20 A. I don't know.

21 Q. Did Lorillard advertise Kent cigarettes to any other  
22 occupational group other than doctors by occupation?

23 MR. OHLEMEYER: Object to the form of the  
24 question.

25 A. I don't know. I don't know.

89749081

1 Q. Did Lorillard, by its advertising, intend to convey  
2 to the public the Kent cigarette provided health protection?

3 MR. CHLEMEYER: Object to the form of the  
4 question.

5 Q. Of any kind?

6 MR. CHLEMEYER: Same objection.

7 A. I don't know.

8 Q. Have you ever seen any advertisements promoting the  
9 Kent cigarette where the phrase health protection was used?

10 A. I believe I have seen that phrase, yes.

11 Q. What did Lorillard intend to convey by the use of the  
12 expression, health protection?

13 A. I don't know.

14 MR. JOHNSON: Let's take two minutes.

15 (3:00 p.m. - Pause in the proceedings.)

16 (3:04 p.m. - The proceedings resumed.)

17 MR. JOHNSON: Ready to proceed, Doctor?

18 THE WITNESS: Yes.

19 Q. Dr. Spears, more generally, did, in 19 -- in 1952,  
20 did Lorillard demonstrate Kent cigarettes at medical  
21 conventions?

22 A. I believe they had a demonstration, yes. I have seen  
23 documents to that effect.

24 Q. Why did Lorillard present these demonstrations at  
25 medical conventions?

89743082

1 A. I don't know, but I presume to demonstrate a  
2 difference between cigarettes and Kent.

3 Q. What difference were they trying to convey?

4 A. One that I recall was a difference in smoke yield.

5 Q. Please explain what you mean by smoke yield.

6 A. I believe they had a demonstration which showed a  
7 visual difference between the amount of smoke from a puff of  
8 Kent cigarette -- on a puff of Kent cigarettes versus some  
9 other cigarette.

10 Q. What -- to what end?

11 MR. OHLEMEYER: Object to the form of the  
12 question.

13 A. To the end that I initially started out with, to show  
14 a difference, a lesser amount of smoke from the Kent  
15 cigarette.

16 Q. What did Lorillard hope to accomplish by showing a  
17 difference in smoke yield between Kent and other cigarettes?

18 A. Well, beyond demonstrating that it contained a  
19 superior filter, I don't know.

20 Q. In 1952, did Lorillard have a policy of being a good  
21 corporate citizen?

22 MR. OHLEMEYER: Object to the form of the  
23 question.

24 A. I don't know the Lorillard policy at that time.

25 Q. Are you familiar with what an annual report is?

89749083

- 1 A. Yes.
- 2 Q. What is an annual report as it applies to Lorillard?
- 3 MR. FRAZIER: Today?
- 4 A. Today?
- 5 Q. No. In 1952.
- 6 A. I don't -- I don't remember looking at 1952 annual
- 7 reports, but I would presume they're similar to the ones
- 8 today, contain similar information.
- 9 Q. All right. And what are the purposes of annual
- 10 reports today, then?
- 11 A. To provide financial status of the company, prior
- 12 years performance, compare it with other years; to provide
- 13 some perspective of the future interests of the company.
- 14 Q. To whom are the annual reports sent?
- 15 A. To the shareholders.
- 16 Q. Are they also available to the public?
- 17 A. Generally, yes.
- 18 Q. Are they a means by which the company sets forth its
- 19 policies?
- 20 MR. CHLEMEYER: Object to the form of the
- 21 question. It has been asked and answered.
- 22 A. They may or may not be. Policies may or may not be
- 23 contained in the annual reports.
- 24 Q. Well, in the 1952 annual report at Lorillard, Page
- 25 14, under quote there, the following passage: Those who

89743084

1 live by the public we believe owe it an obligation beyond  
2 that of providing fine products; that obligation is to be a  
3 good corporate citizen. Do you have any reason to believe  
4 that that was not Lorillard's policy in 1952?

5 MR. CHLEMEYER: Object to the form of the  
6 question.

7 A. No, I have no reason to believe it was not.

8 Q. Is that Lorillard's policy today?

9 MR. CHLEMEYER: Object to the form of the  
10 question.

11 A. It would be similar, yes.

12 Q. In what way would it be different?

13 A. I haven't seen a recent statement of Lorillard's  
14 policy, but certainly it would embody being a good corporate  
15 citizen.

16 Q. Wasn't it Lorillard's policy in 1952 that there was  
17 no consumer product more sensitive to advertising than  
18 cigarettes?

19 MR. CHLEMEYER: Object to the form of the  
20 question. Mr. Johnson, if you are trying to cross-examine  
21 him with something that's a previous or prior statement, why  
22 don't you show him the statement first?

23 (Mr. Johnson and Mr. Childs confer.)

24 MR. CHLEMEYER: Actually, I'd prefer you not  
25 cross-examine him.

89749085

1 MR. JOHNSON: Fine. I'm not sure that we will be  
2 able to get through this deposition with you agreeing with  
3 everything I do, Mr. Ohlemeyer but we will try to muddle  
4 through despite that.

5 Q. Can you answer my question?

6 A. Would you repeat the question?

7 Q. Sure. Was it Lorillard's policy in 1952 that there  
8 was no consumer product more sensitive to advertising than  
9 cigarettes?

10 MR. OHLEMEYER: Object to the form of the  
11 question.

12 A. I don't know, but I wouldn't -- I don't know what  
13 their position was, but I wouldn't call it policy in any  
14 event. I would think it would be more of a position if they  
15 took such a position. I wouldn't call it policy is what I  
16 am trying to say.

17 Q. Uh-huh. In 1952, did Lorillard believe that the  
18 extent to which a brand succeeded in increasing its share of  
19 the market was dependent on the extent to which it got  
20 advertising support?

21 MR. OHLEMEYER: Object to the form of the  
22 question. Mr. Johnson, if you're trying to get him to agree  
23 or disagree with a prior statement made by the company,  
24 there's a proper way to do it. This isn't the way to do it.  
25 The fact that this witness either -- either knows or doesn't

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1 know what was written in a 1952 corporate report doesn't  
2 have any bearing on this lawsuit. There is information  
3 available to you through the company either through the  
4 person in the company who knows the most about a particular  
5 area or through other written records that may be available  
6 from the time period. Now it seems to me if you'd like the  
7 witness to agree or disagree with those records that are  
8 available to you, or if you'd like the witness to tell you  
9 the other sources of information that might be available to  
10 you through the company, that's fine. But to get -- to ask  
11 him about something that you're reading from without showing  
12 it to him and then have him opine as to whether that is true  
13 or false is just entirely improper and I object to it.

14 Q. Do you recall the question?

15 A. I'd like it repeated, please.

16 MR. JOHNSON: Please read it back.

17 (The last question is read by the reporter.)

18 MR. CHLEMEYER: Is that the pending question?

19 MR. JOHNSON: That's the pending question.

20 MR. CHLEMEYER: I reiterate my objection and I  
21 will instruct the witness not to answer questions concerning  
22 statements you were reading to him from a document that you  
23 won't show him. There's a proper way to do this; it's not  
24 during a discovery deposition, but in any event, if you  
25 would like to question him about things that have been

89749087



1 written that you contend were written on behalf of the  
2 company in a certain period of time, the proper way to do it  
3 is to show him the document and then ask your questions.  
4 You can't read from it and then ask him whether he agrees or  
5 disagrees with a statement like that in the abstract.

6 I instruct you not to answer the question as it is  
7 currently phrased.

8 MR. JOHNSON: On what basis?

9 MR. OHLEMEYER: On the basis that you are  
10 improperly cross-examining this witness.

11 MR. JOHNSON: You are instructing the witness not  
12 to answer -- you are instructing Lorillard's spokesman not  
13 to answer on the grounds that the form of the question is  
14 cross-examination?

15 MR. OHLEMEYER: No. I have instructed the  
16 witness not to answer. You may proceed with your next  
17 question, and I will consider whether I will let him answer  
18 the question. I've made my instruction; I've made my  
19 objection. Please move on.

20 MR. FRAZIER: I'd like to interpose one  
21 additional form objection, and that is a question asked a  
22 witness under these circumstances to state what the  
23 corporation believed or did not believe seems to me puts the  
24 witness in a position where he cannot answer as opposed to  
25 the question that asks him whether the corporation said

89743088

1 something or didn't say it, which is a factual question.

2 Q. Before Lorillard would advertise -- . Strike that.

3 Before Lorillard would begin a particular advertising theme,  
4 would it pretest that theme in order to determine whether or  
5 not it would be successful?

6 MR. CHLEMEYER: Object to the form of the  
7 question.

8 A. I don't know that period.

9 Q. Did Lorillard advertise Kent cigarettes on "The Web"  
10 television program in the early 1950s?

11 A. Yes.

12 Q. Was that a successful advertising approach?

13 MR. CHLEMEYER: Object to the form of the  
14 question.

15 A. I don't know whether it was successful or not.

16 Q. Well -- (document to the witness by Mr. Johnson) --  
17 directing your attention to the last line above other  
18 advertising developments from the Lorillard annual report --

19 A. Excuse me. Where are you directing me?

20 Q. The last sentence.

21 A. Here?

22 Q. Yes.

23 MR. CHLEMEYER: For my clarification, this is  
24 annual report from which year?

25 MR. JOHNSON: 1952.

89749089

1 MR. OHLEMEYER: Do we have a page number?

2 MR. JOHNSON: Sure. It's on Page 16.

3 MR. OHLEMEYER: Thank you.

4 A. Yes, I see the statement.

5 Q. The statement is: Already the visual demonstration  
6 of Kent filter superiority by Jonathan Blake have become  
7 classics of television sales conviction, referencing the  
8 television program, "The Web" in the previous sentence,  
9 correct, Dr. Spears?

10 A. Yes it is referencing "The Web".

11 Q. Do you think that Lorillard would have made that  
12 statement concerning advertising for Kent cigarettes on  
13 "The Web" if they didn't think it was a successful  
14 advertising campaign?

15 MR. OHLEMEYER: Object to the form of the  
16 question.

17 A. I don't know. I have seen some in more contemporary  
18 annual reports that were written that were a bit pompous.

19 MR. OHLEMEYER: If it will help, we can stipulate  
20 the annual reports say what they appear to say.

21 Q. In 1953, did Lorillard believe that its products were  
22 injurious to anyone's health?

23 MR. OHLEMEYER: Object to the form of the  
24 question.

25 A. Not to my knowledge.

89749090

1 Q. Is that still Lorillard's position today?

2 MR. CHLEMEYER: Object to the form of the  
3 question.

4 A. Would you restate the question at present?

5 Q. Is that still Lorillard's position today?

6 A. That Lorillard does not believe they're injurious to  
7 health.

8 Q. Right.

9 A. That's correct.

10 Q. And to your knowledge, did Lorillard have any  
11 different position with respect to its Kent products on the  
12 subject of smoking and health compared to its other  
13 products?

14 MR. CHLEMEYER: Object to the form of the  
15 question. I'm not sure I understand the question.

16 Q. Strike that. Did -- in 1952, did Lorillard take on  
17 any responsibility for the public health?

18 MR. CHLEMEYER: Object to the form of the  
19 question. Could you -- excuse me. Could you reread the  
20 question, please?

21 MR. JOHNSON: That's not a very good question. I  
22 think I'll ask a different question.

23 Q. Let me read you a sentence from the 1953 annual  
24 report over the signature of Herbert Kent. We believe  
25 Lorillard products are not injurious to anyone's health, but

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1 we accept this inherent responsibility of our corporate  
2 citizenship, the obligation to make the public's health our  
3 business.

4 Is it your understanding, Dr. Spears, that the --  
5 that Lorillard continued to accept the obligation to make  
6 the public's health their business up until today?

7 MR. OHLEMEYER: Object to the form of the  
8 question.

9 A. Well, I don't know what is meant there by making the  
10 public's health their business. We are not in the business  
11 of a health provider, and I really don't know what that  
12 means. I stand by my prior statement that Lorillard's  
13 position that the products it produces and sells are not  
14 injurious to health.

15 Q. Immediately above that sentence that I've just read  
16 you is the statement: There is no proof that cigarette  
17 smoking is a cause of lung cancer and there is no agreement  
18 upon medical authorities on what that cause may be. Was  
19 that Lorillard's position in 1953?

20 MR. OHLEMEYER: Object to the form of the  
21 question.

22 A. I know nothing beyond what it says.

23 Q. Is that Lorillard's position today?

24 MR. OHLEMEYER: Object to the form of the  
25 question.

89749092

1 A. Lorillard's --

2 MR. OHLEMEYER: Mr. Johnson, we've got a lawsuit  
3 where you have an express disclaimer for any injury caused  
4 by the byproduct of combustion of tobacco smoke.

5 MR. JOHNSON: Right.

6 MR. OHLEMEYER: That being the case and the fact  
7 that we apparently are discussing advertising --

8 MR. JOHNSON: Right.

9 MR. OHLEMEYER: I'd appreciate it if you'd get  
10 back on track.

11 MR. JOHNSON: I think you will see that I will  
12 very shortly if you think I'm off track at all. .

13 Q. Is that Lorillard's position today?

14 A. Essentially, yes. I would state it a little  
15 differently that it has not been scientifically proven that  
16 cigarettes are injurious to health.

17 Q. Now, in 1953, was there publicity suggesting that  
18 cigarette smoking might be a cause of lung cancer?

19 MR. OHLEMEYER: Object to the form of the  
20 question.

21 A. Was there publicity; was that the word you used?

22 Q. Yes.

23 A. I'm not aware of that, no.

24 Q. Was. I think --

25 A. I think of publicity now as something other than

89749093

1 scientific publication.

2 Q. Well, in the annual report in 1953, there's a  
3 statement: Wide publicity was given during 1953 to reports  
4 of experiments with mice and the suggestive statistical  
5 analyses which attempted to link excessive cigarette smoking  
6 with lung cancer. Do you have any reason to believe that  
7 that statement in the annual report is incorrect as to what  
8 was going on in 1953?

9 MR. CHEMEYER: Object to the form of the  
10 question.

11 A. I don't have any information other than what that  
12 states, no.

13 Q. Was any of the advertising that Lorillard produced  
14 directed toward alleviating the public concerns over  
15 possible health effects from cigarette smoking?

16 MR. CHEMEYER: Object to the form of the  
17 question.

18 A. I don't know.

19 Q. In the 1953 annual report, there is a section on  
20 advertising that is entitled the advertising investment  
21 yielded greater dividends. And -- (document to the witness  
22 by Mr. Johnson) -- put that in front of you. Is there not  
23 a subheading here that indicates that Lorillard's  
24 advertising reached a hundred million people per week?

25 MR. CHEMEYER: Object to the form of the

89749094

1 question.

2 A. Where are you directing my attention?

3 Q. (Mr. Johnson indicates by pointing.)

4 A. Oh, at the top. The headline is the advertising  
5 invested yielded greater dividends. Lorillard brand message  
6 reached a hundred million people weekly in 1953 is the  
7 statement.

8 Q. Was -- do you have any reason to believe that that  
9 statement in Lorillard's annual report was incorrect  
10 concerning the number of people who were reached by their  
11 advertising?

12 MR. CHLEMEYER: Object to the form of the  
13 question.

14 MR. POUL: Get back on track. You promised.

15 A. I can't tell how reliable that is. I don't know how  
16 they made the measurements.

17 Q. Well, would you have any reason to believe that  
18 Lorillard would put statements in their annual report about  
19 their advertising that were less than reliable?

20 MR. JOHNSON: Object to the form of the question.

21 A. I am saying somebody made that estimate, but, and I'm  
22 sure they were -- they were using the estimate in their  
23 annual report, but how that estimate was made, I don't know.

24 Q. Does Lorillard take --

25 A. So I can't tell you how accurate it is.

89749095



1 Q. -- take care to see that what they put in their  
2 annual report is truthful?

3 MR. CHLEMEYER: Object to the form of the  
4 question. Mr. Johnson, this witness is here to tell us  
5 about what he knows about four subjects that you have listed  
6 for us in your deposition notices. Can we please start  
7 inquiring about what he knows about those subjects?

8 MR. JOHNSON: I am inquiring of what the  
9 corporation knows and the corporation certainly expresses  
10 what it knows in one way through its annual report.

11 MR. CHLEMEYER: If you would like me to produce  
12 a witness who can talk to you about a composition and  
13 construction of the annual reports, send me a deposition  
14 notice that sets forth that and we'll talk with the Judge  
15 about it; otherwise, let's please move on.

16 MR. JOHNSON: I would like you to set out -- I  
17 would like you to produce for me a witness who can discuss  
18 Lorillard's advertising from 1952 to 1956 and you've  
19 identified this person as the witness, and therefore, I'm  
20 questioning the witness about what Lorillard knew about its  
21 own advertising in 1952 through 1956.

22 MR. CHLEMEYER: And he's -- and him reading to  
23 you sentences you've read to him from the corporate report  
24 is not advancing anybody's interest in this lawsuit. Please  
25 move forward.

89749096

1 Q. I believe the pending question is: Did Lorillard  
2 take care to see that the statements made in its annual  
3 report about advertising were accurate.

4 MR. POUL: Were you talking about advertising of  
5 Kent cigarettes?

6 MR. JOHNSON: Yes.

7 A. No, this was not Kent cigarettes.

8 MR. POUL: That statement you're reading is not  
9 about Kent cigarettes.

10 A. About all brands.

11 MR. JOHNSON: It's about advertising and it's  
12 about brands, including Kent cigarettes.

13 A. Yes. Lorillard brand.

14 Q. Absolutely. Now, my pending question again is: Did  
15 Lorillard take care to see that the statements that were put  
16 in its annual reports concerning advertising were truthful?

17 MR. CHLEMEYER: Object to the form of the  
18 question.

19 A. My only response can be that I can read what is here.  
20 I don't know the people who prepared it and I don't know  
21 what precautions they took to -- to make sure that it was  
22 accurate or it wasn't, you know, degree of accuracy.

23 Q. Well, does Lorillard take precautions today?

24 A. Today Lorillard takes precautions to accurately write  
25 annual reports.

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1 Q. And do you have any reason to believe that they took  
2 less precautions back in 1953 when this particular report  
3 was prepared?

4 MR. OHLEMEYER: Object to the form of the  
5 question.

6 A. I have no reason to believe one way or the other  
7 because I don't know.

8 (Document to the witness by Mr. Johnson.)

9 Q. Showing you the next page of the annual report. Did,  
10 in 1953, did Lorillard win -- Lorillard or its advertising  
11 agency win any awards for Kent advertising?

12 A. It says here that they did. It says Kent commercial  
13 won many honors.

14 Q. Is that true?

15 A. I have no reason to question this, but I don't  
16 personally know.

17 Q. What particular award did Kent win?

18 A. According to this, they won a hard sell award,  
19 Advertising Age.

20 Q. Have you ever heard of Advertising Age?

21 A. Yes.

22 Q. What's Advertising Age?

23 A. A magazine.

24 Q. Is it a fairly respected periodical in the  
25 advertising industry?

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1 MR. OHLEMEYER: Object to the form of the  
2 question.

3 A. Today it is, yes.

4 Q. Was it in 1953?

5 A. I don't know.

6 Q. What does hard sell mean as it applies to  
7 advertising?

8 MR. OHLEMEYER: Object to the form of the  
9 question.

10 A. I don't know. It's in quotes, so I suppose whoever  
11 wrote this had a special meaning for the word hard sell.

12 Q. What is your understanding of what hard sell is as it  
13 applies to advertising?

14 MR. OHLEMEYER: Object to the form of the  
15 question. I will remind you again this notice relates to  
16 the advertisement of Kent cigarettes between 1952 and 1956.

17 MR. JOHNSON: You will note that this is an award  
18 won by Kent for its advertising in 1953.

19 MR. OHLEMEYER: And you've asked this witness  
20 what his understanding is of the meaning of hard sell.

21 MR. JOHNSON: No, no. What is Lorillard's  
22 understanding of what the word hard sell means.

23 MR. OHLEMEYER: No, Mr. Johnson, you are  
24 deposing Dr. Alex Spears. You are asking Dr. Alex Spears  
25 what his understanding is. Whether his understanding of

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1 something becomes Lorillard's understanding of something is  
2 a legal conclusion to be drawn at a subsequent date. You  
3 have asked -- the pending question is what is this witness's  
4 understanding of what hard sell means today, 1991, as it  
5 applies to advertising. Unless you limit your question to  
6 the noticed area of inquiry, I'm not going to permit you to  
7 keep asking him these kind of questions.

8 MR. JOHNSON: Fine. I will withdraw that  
9 question and ask a different question.

10 Q. What is Lorillard's understanding of hard sell as it  
11 applies to advertising?

12 MR. CHLEMEYER: I object to the form of the  
13 question.

14 A. I don't know what Lorillard's understanding of the  
15 use of the word hard sell in 1953 would be. If you're  
16 asking me personally today, I would say it was persuasive  
17 sell.

18 (Document to Mr. Johnson by the witness.)

19 Q. At the top of that page of the annual report that we  
20 were just discussing. Is there a chart which describes the  
21 various means by which Lorillard products were advertised?

22 A. Entitled network advertising, yes.

23 Q. And is one of the programs listed under there "The  
24 Web"?

25 A. Yes.

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1 Q. And are there certain facts concerning "The Web"  
2 television program that are listed?

3 A. Yes, there are.

4 MR. OHLEMEYER: Object to the form of the  
5 question.

6 Q. Does it list the size of the audiences that "The Web"  
7 had?

8 A. Yes, it does.

9 Q. What days does it state?

10 A. I believe it's 13 point two million. A little fuzzy.

11 Q. Are the statements contained in the annual report  
12 about "The Web" accurate?

13 MR. OHLEMEYER: Object to the form of the  
14 question. Mr. Johnson, if you'd like to ask Lorillard a  
15 request for admission to admit or deny if that's accurate,  
16 let's do it that way.

17 MR. JOHNSON: Will Lorillard admit that all the  
18 statements made in their annual reports are accurate?

19 MR. OHLEMEYER: What I will admit or deny is what  
20 you send me pursuant to the Federal Rules of Civil  
21 Procedure. That is the proper way to obtain this kind of  
22 information from the company, not to waste this witness's  
23 time with these kinds of questions.

24 MR. JOHNSON: Mr. Ohlemeyer, if you are going to  
25 produce a witness whose job it is to sit there and say I

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1 don't know within an area that is patently relevant to the  
2 issues in this case, then you're going to have to put up  
3 with me asking questions that he may or may not know the  
4 answer to. There's a proper way for you to do it which you  
5 have chosen not to do.

6 MR. OHLEMEYER: No, Mr. Johnson --

7 MR. JOHNSON: Now Mr. Ohlemeyer, if -- I've asked  
8 you if you want to shorten the time that I need to spend  
9 with this witness whether you will admit that the statements  
10 contained in the annual reports are true.

11 MR. OHLEMEYER: And I have told you that if you  
12 will send me a properly drafted discovery request, I will  
13 consider best how to answer it. What I am telling you is,  
14 this witness is here until six o'clock day; he's here until  
15 noon tomorrow. There is just so much time he has and it  
16 just seems to me, although I don't purport to know what  
17 information you are trying to obtain from him that there are  
18 better uses of your time than asking him to read to you  
19 statements contained in annual reports that you have read to  
20 him.

21 MR. JOHNSON: What's the pending question?

22 (The last question is read by the reporter.)

23 A. I don't know, but I would presume so.

24 Q. Between 1952 and 1954, did Lorillard increase its  
25 advertising for Kent cigarettes, decrease them, or stay

89749102

1 about the same?

2 MR. OHLEMEYER: Object to the form of the  
3 question.

4 A. I don't know.

5 Q. Did you make any efforts to obtain information on  
6 that subject in preparation for this deposition?

7 A. No, I did not.

8 MR. OHLEMEYER: Mr. Johnson, why don't you ask  
9 the witness if that information might not be available from  
10 another source?

11 MR. JOHNSON: Are you prepared to produce another  
12 source to testify for the corporation on this subject,  
13 Mr. Ohlemeyer?

14 MR. OHLEMEYER: That's not what I said.

15 MR. JOHNSON: Okay.

16 Q. Was advertising for Kent cigarettes more or less  
17 effective in 1954 than it was in 1952?

18 MR. OHLEMEYER: Object to the form of the  
19 question.

20 A. I don't know, but it seems to me that whatever  
21 information is available is either in the records or  
22 materials that you have. I don't know any other source, or  
23 they're available from me.

24 Q. Was there any relationship between the effectiveness  
25 of Kents advertising and the amount of cigarettes that they

89749103



1 sold?

2 MR. CHLEMEYER: Object to the form of the  
3 question.

4 A. Was there a relationship between --

5 Q. Yes.

6 A. -- advertising expenditure and cigarettes sold?

7 Q. Yes.

8 MR. POUL: Expenditure or effectiveness?

9 Q. Let's try expenditure first. Is there a relationship  
10 between advertising expenditures and the amount of  
11 cigarettes that Lorillard would sell between 1952 and 1954?

12 MR. CHLEMEYER: Same objection.

13 A. I would deduce that there was because there was no  
14 expenditure prior to their introduction, so that would  
15 produce an automatic correlation.

16 Q. Was Kent in a different competitive situation in 1954  
17 than it was in 1952?

18 MR. CHLEMEYER: Object to the form of the  
19 question.

20 A. I don't know. I mean, I don't really understand the  
21 question.

22 Q. Okay.

23 A. I think they had the same competitors.

24 Q. In Kent's annual report from 1954 in this section of  
25 advertising, is following statement: To meet this highly

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1 competitive challenge, we steadfastly held to those  
2 qualities in our advertising endeavors which have long been  
3 characteristic of Lorillard: Directness, simplicity, and  
4 trustworthiness. Are directness, simplicity and  
5 trustworthiness still characteristics of Lorillard's  
6 advertising?

7 MR. OHLEMEYER: Object to the form of the  
8 question.

9 A. I don't know that I would characterize all  
10 advertising as direct and simplistic. I think that's --  
11 sounds like buzz words of an advertising person.

12 Q. Were -- did Lorillard have a policy in 1954 that its  
13 advertising would be trustworthy?

14 MR. OHLEMEYER: Object to the form of the  
15 question. Excuse me. Could you read the question or  
16 repeat it for me, please?

17 Q. Did Lorillard have a policy in 1954 that its  
18 advertising would be trustworthy?

19 MR. OHLEMEYER: Just a second. I reiterate my  
20 objection to the form of the question.

21 A. I don't know Lorillard's policy in 1954, whether they  
22 would have made such a statement or not.

23 Q. Well, does the Lorillard have any policy within the  
24 time that you were at Lorillard that will help you answer my  
25 question concerning what its policy was in 1954 with respect

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1 to the trustworthiness of its advertising?

2 A. As far as I know Lorillard's policy has always been  
3 that it would be -- that its advertising would be accurate  
4 and factual.

5 Q. And was that -- was that Lorillard's policy between  
6 1952 and 1956?

7 A. As far as I know, but I have no information.

8 Q. What steps did Lorillard take between 1952 and 1956  
9 to see that it would be accurate and factual?

10 MR. OHLEMEYER: Object to the form of the  
11 question.

12 A. I don't know.

13 Q. Did -- would you characterize Lorillard's advertising  
14 between 1952 and '56 as dignified?

15 MR. OHLEMEYER: Object to the form of the  
16 question.

17 MR. McELANEY: As dignified?

18 MR. JOHNSON: Dignified.

19 A. I have no idea.

20 Q. Did Lorillard attempt to see that that characteristic  
21 was part of its advertising, dignity?

22 MR. OHLEMEYER: Object to the form of the  
23 question.

24 A. I don't know, but if the document that you have  
25 before you states that, I have no reason to contest it one

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1 way or the other.

2 Q. Doctor, in the 1955 Lorillard annual report under the  
3 section involving advertising, there is the following  
4 statement: Today's consumer increasingly is a buyer. He  
5 buys that which he has been preconditioned to buy because of  
6 a television commercial, a magazine or a newspaper  
7 advertisement or by whatever means the product's story  
8 becomes etched on his brain. Is that your understanding of  
9 Lorillard's attitude towards its customers in 1955?

10 MR. OHLEMEYER: Object to the form of the  
11 question and further object to the continued use of  
12 documents that you won't let the witness see or won't let  
13 the witness --

14 MR. JOHNSON: The witness wants to see them, I  
15 will be happy to show them to him.

16 MR. OHLEMEYER: The proper way to do it is show  
17 it to him then ask him the questions, Mr. Johnson.

18 A. Repeat the question, please.

19 Q. Do you remember the sentence I read to you from this  
20 or would you like me to show it to you?

21 A. Please read it or show it to me.

22 Q. Okay. (Document to the witness.) If you look under  
23 Today's Consumer, paragraph on the left about half way down  
24 the page.

25 A. Yes.

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1 Q. Would you read that to yourself?

2 A. Okay. I have read it.

3 Q. Do you have any reason to believe that that's not an  
4 accurate statement?

5 MR. OHLEMEYER: Object to the form of the  
6 question.

7 A. I believe it's an accurate statement in the sense  
8 that whoever wrote it believed it. But these kinds of  
9 statements are replete in advertising ~~people's~~ people's statements  
10 and they vary from time to time. It's a general advertising  
11 statement that that ~~A person~~ personnel kind of statement.

12 Q. Did Lorillard believe that they needed to  
13 precondition their consumers before they would buy their  
14 product?

15 MR. OHLEMEYER: Object to the form of the  
16 question.

17 A. I don't know but I doubt it.

18 Q. Are you familiar with the term preselling as it  
19 applies to advertising?

20 A. I am familiar with the term presell, yes.

21 Q. What does that mean?

22 A. A reason for buying prior to purchase.

23 Q. And is that one of the goals of Lorillard's  
24 advertising?

25 A. I think that's the goal of all advertising.

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1 Q. How do you do that?

2 MR. OHLEMEYER: Object to the form of the  
3 question.

4 A. That's -- I guess that's part -- that's the skill of  
5 advertising as to how you do it, an infinite number of  
6 executions of that principle in my mind.

7 Q. Did Lorillard attempt to slant its advertising toward  
8 young adults in their formative years?

9 MR. OHLEMEYER: Object to the form of the  
10 question.

11 A. Not to my knowledge.

12 Q. Did Lorillard attempt to advertise its products to  
13 groups including young adults in their formative years?

14 MR. OHLEMEYER: Object to the form of the  
15 question.

16 A. Not to my knowledge.

17 Q. Take a look at the second paragraph under -- as to  
18 advertising, 1956, annual report. Does the statement appear  
19 there that: One of the groups that was trying to be reached  
20 by advertising was young consumers in their formative years?

21 MR. OHLEMEYER: Excuse me. Have we identified  
22 the date and page of this document?

23 MR. JOHNSON: Yes. That's the annual report,  
24 Page 6, 1956.

25 A. Yes. That's what it says. It says so that all

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1 groups are attracted, both young adults who in their  
2 formative days of life are setting their future patterns and  
3 the more mature clientele whose confidence in products and  
4 quality must be maintained. And what is the question? Did  
5 it say that?

6 Q. Has Lorillard -- the question was: Did Lorillard  
7 advertise cigarette products with an eye toward attracting  
8 young adults in their formative years?

9 MR. OHLEMEYER: Object to the form of the  
10 question.

11 A. That is what it says but I don't really know what it  
12 means. I don't know what young adults in their formative  
13 years are.

14 Q. What part of that statement do you have trouble  
15 understanding?

16 MR. OHLEMEYER: Object to the form of the  
17 question.

18 A. I don't know what age they're in.

19 Q. Has -- between 1952 and 1956, did Lorillard try to  
20 advertise to young adults?

21 MR. OHLEMEYER: Object to the form of the  
22 question.

23 A. Other than that statement, I have no information.

24 Q. Is there any business advantage to having a young  
25 smoker become a Kent smoker as opposed to an older smoker?

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1 MR. CHLEMEYER: Object to the form of the  
2 question.

3 A. In the period '52 to '56, I don't think so.

4 Q. Wouldn't there be a business advantage in having  
5 someone who has many more years of tobacco purchases ahead  
6 of him as opposed to an elderly person?

7 MR. CHLEMEYER: Object to the form of the  
8 question.

9 A. That would be presuming that people didn't switch,  
10 switch brands or do other things. That may or may not be  
11 true.

12 Q. Now, in the end of the annual report in 1956 at  
13 Page 9, would you look at the last sentence on that page.

14 (Document to the witness by Mr. Johnson.)

15 A. Every ingredient is analyzed? That statement?

16 Q. Yes. Why don't you just read that in in the record?

17 A. Every ingredient is analyzed and blends zealously  
18 guarded in a determination to maintain Lorillard's  
19 traditional quality policy of products honestly made,  
20 marketed and advertised.

21 Q. Okay. Now, was that, in fact, Lorillard's  
22 traditional policy, honestly made, marketed and advertised?

23 MR. CHLEMEYER: Object to the form of that  
24 question.

25 A. That is what it says in quotes, yes.

89749111



1 Q. Is that Lorillard's policy?

2 MR. CHLEMEYER: Object to the form of the  
3 question.

4 A. In the period '52 --

5 Q. To '56?

6 A. I have no reason to doubt the policy, no.

7 Q. And was it Lorillard's policy to analyze every  
8 ingredient in its product?

9 MR. CHLEMEYER: Object to the form of the  
10 question.

11 A. I think that that has a different meaning. I think  
12 that has a meaning of -- of a reasonably analyzed and the  
13 reason I say that, immediately below it is a picture of a  
14 laboratory making nicotine and nitrogen measurements on  
15 tobacco. I think it really had reference to that, yes.

16 Q. However, the word reasonably does not appear in that  
17 sentence.

18 A. I still believe that has reference to that, yes.

19 Q. But the word reasonably which you used does not  
20 appear in that passage, is that correct, Dr. Spears?

21 A. No, it does not.

22 Q. And with respect to blends zealously guarded, your  
23 understanding that refers to the blend of tobacco?

24 A. Yes.

25 Q. Was the -- were the ingredients in the Kent filter

89749112

1 zealously guarded?

2 MR. CHLEMEYER: Object to the form of the  
3 question.

4 A. I don't know. I would say no since they were  
5 published in the open literature and they were present in  
6 the patent literature.

7 Q. What open literature do you refer to?

8 A. I am referring to the Chemistry and Industry article.

9 Q. Are you familiar with any other literature other than  
10 the Chemistry and Industry article?

11 A. Patent literature.

12 Q. Apart from the Chemistry and Industry article and  
13 patent literature, any other literature you are aware of  
14 where the make-up of the Kent filter was described?

15 MR. CHLEMEYER: Object to the form of the  
16 question. Mr. Johnson, if you're asking the witness what  
17 he's aware of, that's fine, but if you're asking him what I  
18 think you are asking him, and that is, does Lorillard  
19 contend that the composition of the filter was described in  
20 other publicly available pieces of literature then I object  
21 to the form of the question and instruct him not to answer  
22 it. Do we have an understanding as to what it is you are  
23 asking him?

24 MR. JOHNSON: I think it's written down with the  
25 -- the court reporter has already written it down what I am

89749113

1 asking.

2 MR. OHLEMEYER: Okay. Maybe she'll read it for  
3 me and then I'll understand it. But I'd appreciate hearing  
4 the question.

5 THE WITNESS: The two of you confuse me.

6 MR. OHLEMEYER: I apologize.

7 MR. ROSENBERG: No one person could do that.

8 MR. JOHNSON: Would you read that question again?

9 (The last question is read by the reporter.)

10 MR. OHLEMEYER: I just want to make sure we have  
11 an understanding, Mr. Johnson, you were asking Dr. Spears  
12 what he is aware of. You're not asking what Lorillard is  
13 aware of or what Lorillard contends, is that correct?

14 MR. JOHNSON: This is Lorillard.

15 MR. OHLEMEYER: No. That is where you and I  
16 continue to disagree. If you are asking Lorillard whether  
17 it contends there are publicly available pieces of  
18 information that describe the composition of the Kent filter  
19 between 1952 and '56, I object and I instruct him not to  
20 answer it. You are asking for a contention. If you're  
21 asking this witness what he knows as the person in the  
22 company who knows more than anybody else in the company, go  
23 ahead and ask him, but if you're asking what Lorillard knows  
24 or contends, I object and I will continue to instruct him  
25 not to answer those types of questions. They're absolutely

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1 improper.

2 MR. JOHNSON: My question is whether Lorillard is  
3 aware of any other publicly available documents during the  
4 period 1952 to 1956 where the composition of the Kent  
5 Micronite filter was described.

6 MR. CHLEMEYER: And I object and I instruct him  
7 not to answer.

8 MR. JOHNSON: On what basis?

9 MR. CHLEMEYER: I've objected and I've instructed  
10 him not to answer it. Now if you would like the information  
11 you are looking for, why don't you ask him what he knows.

12 MR. JOHNSON: I will be -- because I will not ask  
13 him what he knows because he is sitting here as Lorillard,  
14 and if he gives an answer that he doesn't know, Lorillard,  
15 as I interpret the Judge's order, is bound by that answer.  
16 You have a responsibility to see that this witness can  
17 testify regarding the corporation's knowledge.

18 MR. CHLEMEYER: No. And as you like to say, now  
19 we've cut to the chase, Mr. Johnson. This witness knows  
20 what he knows. He either knows it because he observed it,  
21 because he heard it, because he learned it, because he read  
22 it. There are things that this witness may not know that  
23 are available to you through other sources. There may be  
24 things that you have asked this witness that he doesn't know  
25 but that are contained in company records. You cannot ask

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1 this witness what Lorillard contends.

2 MR. JOHNSON: I am not asking him what Lorillard  
3 contends. I am asking him what Lorillard knows.

4 MR. OHLEMEYER: And I'm telling you that that is  
5 -- you are asking for Lorillard's contention. You can ask  
6 him what he knows. You can ask him the source of his  
7 knowledge. You cannot ask him what Lorillard contends or  
8 what Lorillard knows and then hope to somehow convince me,  
9 Mr. McElaney or Judge Newcomer that now Lorillard, because  
10 Dr. Spears doesn't know it, doesn't know it. Dr. Spears has  
11 told you that he knows what he knows and what he doesn't  
12 know might be in the information you have in front of you  
13 that you keep reading to him or information that is in  
14 company records somewhere. It just seems to me that if you  
15 want to know what he knows about articles concerning the  
16 composition of the filter, you can ask him. If you want to  
17 know what Lorillard contends, you've already asked us in  
18 interrogatory that I understand the response is not  
19 returnable just yet, so there's a proper way to ask  
20 Lorillard what they contend, there's a proper way to ask him  
21 what he knows and you have all the time you want to convince  
22 Judge Newcomer that what he knows limits what Lorillard  
23 knows or what Lorillard contends, but I'm not going to let  
24 you ask him those kind of questions. Ask him what he knows.

25 MR. JOHNSON: Just so I am clear, Mr. Ohlemeyer,

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1 you will not let me ask this witness what Lorillard knows.

2 MR. OHLEMEYER: I will let you ask this witness  
3 what he knows. He has told you that he knows more about  
4 these subjects than anybody else at Lorillard. That is the  
5 whole point. Ask him what he knows.

6 MR. JOHNSON: I want to know what Lorillard  
7 knows, Mr. Ohlemeyer.

8 MR. OHLEMEYER: And the way you do -- there's --  
9 Tom, there's three ways you do it: You ask the witness, you  
10 ask the person at the company who knows the most about it  
11 what they know. You ask the company through other  
12 interrogatories or requests -- discovery requests what they  
13 know or you ask some third party who may -- who somehow may  
14 have imparted knowledge to the company. All I am telling  
15 you with this witness, your time is much better spent asking  
16 him what he knows and that is what is consistent and proper  
17 with respect to the Rules of Civil Procedure, what  
18 Judge Newcomer has said and what we're all here to do. If  
19 you want to know what Lorillard contends, send me a big fat  
20 set of contention interrogatories.

21 MR. JOHNSON: I am not asking this witness what  
22 Lorillard contends. I am asking what the corporation knows.

23 MR. OHLEMEYER: And the way -- however you want  
24 to do that, what you have to do is ask him what he knows.

25 Q. Does the corporation know of any publicly available

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1 documents other than the ones you have already described  
2 which describe the make-up of the Kent Micronite filter  
3 between 1952 and 1956?

4 MR. OHLEMEYER: I object to the question; I  
5 instruct him not to answer it.

6 MR. JOHNSON: Okay.

7 Please mark that question so we can find it.

8 MR. OHLEMEYER: Mr. Johnson, are you refusing to  
9 ask this witness what he knows? Why don't you ask him what  
10 he knows. Ask him that same question, only ask him what he  
11 knows.

12 MR. JOHNSON: Because since this witness has  
13 already told us he wasn't present between '52 and '56, I  
14 doubt that that will be -- provide much productive  
15 information. I believe I am entitled to find out from this  
16 witness what the corporation knows because you have  
17 designated him as the witness for the corporation.

18 MR. OHLEMEYER: So I am clear, you are refusing  
19 to ask this witness whether he is aware of publicly  
20 available information that describes the composition of the  
21 Kent Micronite filter between 1952 and 1956?

22 MR. JOHNSON: No. I will ask him that question.

23 MR. OHLEMEYER: Then ask him that question.

24 MR. JOHNSON: Sure; be happy to ask him that  
25 question, but I am also entitled to the second question.

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1 Q. Dr. Spears, are you aware of publicly available  
2 information involving the composition of the Kent Micronite  
3 filter between 1952 and 1956, other than what was in the  
4 patent application and the Chemistry and Industry article?

5 A. I am aware of some other articles that indicate it  
6 had asbestos in the filter.

7 Q. Which are they?

8 A. They're a number of articles in the Journal of  
9 American Medical Association.

10 Q. And when -- can you place for us when those articles  
11 appeared?

12 A. <sup>They're</sup> ~~There~~ in that time period. I don't remember the  
13 exact dates.

14 Q. 1952 to 1956?

15 A. I believe so, yes.

16 Q. Can you tell me in what form those articles appeared,  
17 whether they were letters to the editor or editorials or  
18 case studies or in what form?

19 A. They were reports from the American Medical  
20 Association laboratory.

21 Q. Were they reports of some study done?

22 A. On cigarettes, yes.

23 Q. Was the name Kent or Lorillard used in the article?

24 A. Not to my knowledge, no.

25 Q. In other words --

89749119



1 A. Cigarettes were described as I recall by letter  
2 description. One of them had a further description of  
3 containing asbestos in the filter.

4 Q. Just so I understand your answer, your -- what it is  
5 is, these cigarettes were identified by cigarette A,  
6 cigarette B, cigarette C and so on?

7 A. I believe that's correct.

8 Q. Okay. And there was a reference to one of those  
9 cigarettes having an asbestos filter?

10 A. Yes, containing asbestos in the filter.

11 Q. And as you recall it, there was no reference in the  
12 article to what the actual brands of cigarettes were that  
13 were designated as A, B and C and so on?

14 A. Beyond the description I've already given, no.

15 Q. Did Lorillard promote the fact -- promote the  
16 findings reached by the American Medical Association in any  
17 of its advertising?

18 MR. CHLEMEYER: Object to the form of the  
19 question.

20 A. Well the findings were basically that it was a low  
21 tar cigarette and delivered less tar and nicotine than the  
22 rest of the brands tested.

23 Q. And did Lorillard promote those findings of the --  
24 that were published in the Journal of the American Medical  
25 Association?

89749120

1 A. I don't know whether they promoted those specific  
2 findings; I don't recall, but in the context they promoted  
3 the product as a low tar cigarette. It's consistent with  
4 that.

5 Q. Well, I guess there -- other than the article --  
6 article or articles in the Journal of the American Medical  
7 Association and the other documents that you've described,  
8 is there any other publicly available document that you have  
9 in mind where the composition was described?

10 A. No, I don't have any others in mind.

11 Q. Okay. And did the Journal of the American Medical  
12 Association subsequently take a position as to whether its  
13 tests should be interpreted to --. Strike that.

14 After the Journal of the American Medical Association  
15 published those test results, were there subsequent articles  
16 in the Journal of the American Medical Association regarding  
17 those tests?

18 A. I don't know.

19 Q. Did the Journal not denounce the use of Lorillard --  
20 use by Lorillard of those test results to promote Kent  
21 cigarettes?

22 MR. OHLEMEYER: Object to the form of the  
23 question.

24 A. I don't know.

25 Q. You've never seen any articles from the Journal

89749121

1 following that article that you referenced discussing the  
2 use by Lorillard of the Journal's test results?

3 MR. OHLEMEYER: Object to the form of the  
4 question.

5 A. I don't recall that, no.

6 Q. Do you recall any editorial by the Journal of the  
7 American Medical Association on that subject?

8 A. I have some vague recollection, but I don't recall  
9 specifically, no.

10 Q. Well do you recall whether or not the editorial was  
11 critical of Lorillard or not?

12 A. No, I don't.

13 MR. HARDY: Tom, I'd like to take a break  
14 whenever you can find a good time.

15 MR. JOHNSON: Now is fine, David.

16 (4:05 p.m. - Pause in the proceedings.)

17 (4:15 p.m. - The proceedings resumed.)

18 Q. Dr. Spears --

19 A. Yes.

20 MR. OHLEMEYER: Are we on?

21 MR. JOHNSON: Yes, we are on.

22 Q. Dr. Spears, let me show you an advertisement that  
23 appeared in a number of publications in 1954 for Kent.  
24 First of all, have you ever seen that advertisement before?

25 A. I'm not sure. I don't think so.

89749122

1 Q. In the advertisement, do they ascribe certain  
2 characteristics to the material in the Kent filter in the  
3 text at the bottom of the page?

4 MR. CHLEMEYER: Object to the form of the  
5 question.

6 MR. POUL: Pardon me. Has that document been  
7 identified either as an exhibit or by reference or  
8 production number or something like that?

9 MR. JOHNSON: I have before but I will as soon as  
10 he hands it back.

11 A. The question was --

12 Q. Okay. Do you see that in that advertisement, it  
13 states: And remember Kent and only Kent has the Micronite  
14 filter made of a pure dust free completely harmless material  
15 that is not only so effective but so safe it is actually  
16 used to help filter the air in operating rooms at leading  
17 hospitals. Does that statement appear in that?

18 MR. CHLEMEYER: Object to the form of the  
19 question.

20 A. Yes.

21 Q. What was the material used in Kent filters between  
22 1952 and 1956?

23 A. It was a mixture of cotton, I believe cellulose  
24 acetate, asbestos, and crepe paper.

25 Q. Were any of those four elements that you've just

89749123

1 described ever used to filter the air in hospital operating  
2 rooms?

3 MR. CHLEMEYER: Object to the form of the  
4 question.

5 A. I don't know.

6 Q. What factual basis or scientific basis, if any, did  
7 Lorillard have for claiming that the material in its  
8 Micronite filter was completely harmless?

9 MR. CHLEMEYER: Object to the form of the  
10 question.

11 A. I don't know what information they had to make that  
12 claim at that time to make that statement.

13 Q. What scientific basis did they have to make the claim  
14 that the material in the Micronite filter was safe?

15 MR. CHLEMEYER: Object to the form of the  
16 question.

17 A. I would think the absence of any data or information  
18 suggesting it was not safe, but I don't know.

19 (Mr. Poul approaches Mr. Johnson to view  
20 document.)

21 Q. What scientific basis did they have to make the claim  
22 that it was pure and dust free?

23 MR. CHLEMEYER: Object to the form of the  
24 question.

25 A. Pure, I don't know exactly what that means other than

89749124

1 I assume it relates to the quality of the material, that it  
2 was not contaminated with materials other than what they're  
3 represented to be. Dust free, I guess speaks for itself.

4 Q. Well, in the -- was dust free an important  
5 characteristic of the Kent Micronite filter?

6 MR. OHLEMEYER: Object to the form of the  
7 question.

8 A. I don't know what they really mean by that.

9 Q. Why did Lorillard want the public to know that its  
10 filter was dust free?

11 MR. OHLEMEYER: Object to the form of the  
12 question.

13 A. I don't know the answer to that. I can -- you know,  
14 I can imagine that there were other filters that weren't  
15 dust free. I don't know.

16 Q. As you sit here today, are there -- do you know of  
17 any filters that were dusty during this period between 1952  
18 and 1956?

19 A. No, but I don't know that they weren't, either. I  
20 don't know one way or the other.

21 Q. Do you know of any filters other than Kent that  
22 contain mineral fiber?

23 A. Mineral fiber?

24 Q. Yes.

25 A. No.

89749125

1 Q. Did -- were there competitors of Lorillard's that  
2 advertised their products as having a nonmineral fiber?

3 A. I don't know, but I was going to add to the other  
4 question, there -- I believe there were filters that were  
5 made of cotton at that time.

6 Q. Well --

7 A. A component of this filter.

8 Q. Sure, but cotton is not a mineral fiber, is it?

9 A. No, but -- cotton can be dusty I guess is what I am  
10 saying, I suppose.

11 Q. What was the point of having the American Medical  
12 Association's test results advertised to Kent smokers?

13 MR. OHLEMEYER: Object to the form of the  
14 question.

15 A. Point of having -- I don't know what the point of it  
16 was. Simply a statement, I guess, that the test results of  
17 that laboratory confirmed that the company hoped that we  
18 confirmed that they were the lowest tar product.

19 Q. How would the statements --. Would those statements  
20 tend to sell more Kent cigarettes?

21 MR. OHLEMEYER: Object to the form of the  
22 question.

23 A. I think the whole advertising -- the advertisement is  
24 to provide information which hopefully would interest people  
25 in buying Kent cigarettes, yes.

89749126

1 Q. Was it an attempt to encourage people to purchase  
2 Kent cigarettes based on concerns about health?

3 MR. OHLEMEYER: Object to the form of the  
4 question.

5 A. I don't see anything here that would suggest that. I  
6 don't know.

7 Q. Was there any concern at the time of this  
8 advertisement in 1954 that some filters were not harmless,  
9 or that they were harmful?

10 MR. OHLEMEYER: Object to the form of the  
11 question.

12 A. Concern that some filters were harmful?

13 Q. Yes, sir.

14 A. Not to my knowledge.

15 Q. What point would there be in identifying the  
16 components of the Kent filter then as being harmless?

17 MR. OHLEMEYER: Object to the form of the  
18 question.

19 A. I don't know. I mean, beyond that obviously is what  
20 they believed, and when they made the statement. I have no  
21 -- no other basis for why they would make the statement.

22 MR. JOHNSON: For the purposes of the record,  
23 let's mark this is an exhibit, Exhibit Number 1.

24 MR. OHLEMEYER: I think we were numbering before  
25 numerically and stopped at 10. Do you want to start at 11?

89749127



1 MR. JOHNSON: I don't care if we put 11 on it.

2 MR. CHLEMEYER: Spears 11.

3 (Exhibit 11 is marked by the reporter.)

4 MR. JOHNSON: And obviously I do that without  
5 changing my contentions about this witness's status today as  
6 opposed to the last time.

7 MR. CHLEMEYER: I am not sure I understand what  
8 that means. Can you explain that for me?

9 MR. JOHNSON: I think we have a disagreement over  
10 whether this witness's statements bind the corporation and  
11 you and I have already talked about that at some length.

12 MR. CHLEMEYER: What does that have to do with  
13 how you mark the exhibit?

14 MR. JOHNSON: I don't see any point in fighting  
15 with you about that, Bill. I will mark it continuously even  
16 though it's in a different status now than he was last time.

17 MR. CHLEMEYER: Mr. Johnson, I told you ad  
18 nauseam that you can assume that when Dr. Spears testified  
19 on April fourth, 1991, he was testifying as the individual  
20 at Lorillard most knowledgeable about the subject matters  
21 you have inquired about. Now, how that affects the way you  
22 number the exhibits is beyond me, but I'm beginning to  
23 become a little offended at your continual reference to what  
24 you and I disagree to because it has nothing to do with what  
25 we are here to do.

89749128

1 MR. JOHNSON: You've made your comments, counsel,  
2 now I'd like to proceed with questioning of the witness if  
3 you don't mind.

4 Q. Let me show you another advertisement for Kent  
5 cigarettes from 1954. Do you see a reference next to the  
6 word Kent at the bottom left on that advertisement with  
7 reference to health protection?

8 A. Yes.

9 Q. And the expression health protection also appears at  
10 the top of the ad as well, is that right?

11 A. Yes.

12 Q. Why did Kent use the expression health protection in  
13 its advertisements?

14 A. I don't know. You mean --

15 Q. Pardon me?

16 A. I don't know.

17 Q. By using that expression, were they seeking to appeal  
18 to a particular market?

19 MR. CHLEMEYER: Object to the form of the  
20 question.

21 A. I don't know.

22 Q. Pardon me?

23 A. I don't know.

24 Q. Were they seeking to address a particular concern on  
25 the part of the consuming public?

89749129

1 MR. OHLEMEYER: Object to the form of the  
2 question.

3 A. I don't know. They may have been, but I don't know.

4 Q. What was the Kent cigarette supposed to have been  
5 protecting a smoker from?

6 MR. OHLEMEYER: Object to the form of the  
7 question.

8 A. Well, from the nature of the material they present, I  
9 would say smoke yield. That I see this as basically an  
10 advertisement for a low tar cigarette; low tar, low  
11 nicotine.

12 Q. Would you characterize --

13 A. With demonstrations to support that.

14 Q. Is the statement: Full smoking pleasure plus proof  
15 of the greatest health protection ever, a health claim?

16 MR. OHLEMEYER: Object to the form of the  
17 question.

18 A. Is it a health claim?

19 Q. Yes.

20 A. Depends on how you define health claim, I guess.

21 Q. What does Lorillard think a health claim is?

22 MR. OHLEMEYER: Object to the form of the  
23 question. Instruct him not to answer.

24 Q. Did Lorillard make any health claims in its  
25 advertisements for Kent cigarettes between 1952 and 1956?

89749130

1 MR. OHLEMEYER: Object to the form of the  
2 question. He's already asked you to define the term health  
3 claim for him.

4 A. As I said, I don't know what this phrase greatest  
5 health protection means. I would not necessarily  
6 characterize it as a health claim.

7 Q. What is it if not a health claim?

8 A. I could characterize it as simply a -- a promotion  
9 for a low tar cigarette.

10 Q. Why would a low tar cigarette be beneficial to  
11 health?

12 MR. OHLEMEYER: Object to the form of the  
13 question.

14 A. Again, I'm speculating about the reasons, but I would  
15 presume that the yield of tar and nicotine was what was  
16 being advertised.

17 Q. What relationship --

18 A. And --

19 Q. I am sorry.

20 A. Excuse me. And that's really as far as I can go.

21 Q. What relationship, if any, is there between low tar  
22 and nicotine yield and health?

23 MR. OHLEMEYER: Object to the form of the  
24 question.

25 A. I don't know that there is a relationship, but I

89749131

1 would say that some people speculated that there was a  
2 relationship between tar yield and health or at least tar  
3 yield and, yes, health.

4 Q. Did Lorillard advertise low tar yield with respect to  
5 Kent cigarettes in an effort to appeal to that portion of  
6 the public that believed there was a relationship between  
7 low tar yield and health?

8 MR. CHLEMEYER: Object to the form of the  
9 question.

10 A. I don't know. I think they certainly advertised it  
11 as a low tar cigarette, as I say with demonstrations trying  
12 to make that point.

13 Q. Well was there a segment of the consuming public that  
14 believed that a low tar cigarette was a healthier cigarette?

15 MR. CHLEMEYER: Object to the form of the  
16 question.

17 A. There may have been but I really have no information  
18 in that period of time.

19 Q. Well, is there a portion of the public that believes  
20 that today?

21 MR. CHLEMEYER: Object to the form of the  
22 question.

23 A. I would say yes.

24 Q. Is that why Lorillard sells low tar cigarettes?

25 MR. CHLEMEYER: Object to the form of the

89749132

1 question.

2 A. No, that's not why Lorillard sells low tar  
3 cigarettes. Lorillard produces a spectrum of cigarettes to  
4 give consumer choice ~~and~~ in terms of the various options  
5 ~~that they want to choose.~~

6 Q. And Lorillard knows that there is a proportion of the  
7 public that prefers low tar cigarettes because of concerns  
8 over health, isn't that correct?

9 MR. CHLEMEYER: I object to the form of the  
10 question. Please rephrase the question, Mr. Johnson.

11 A. I think that there are segments of the smoking  
12 population that prefer low tar cigarettes, yes. What is  
13 going on in their mind<sup>s</sup>, I really can't tell you.

14 Q. Does Lorillard try to find out what goes on in their  
15 minds?

16 MR. CHLEMEYER: Object to the form of the  
17 question.

18 A. No, I don't think there is any way you can find out  
19 what goes on in their minds.

20 Q. Isn't it part of Lorillard's business to find out why  
21 people buy its cigarettes?

22 MR. CHLEMEYER: Object to the form of the  
23 question, and remind you, Mr. Johnson, you are asking -- as  
24 I understand this portion of the examination to be the  
25 advertising of Kent cigarettes between 1952 and 1956.

89749133

1 MR. JOHNSON: You are absolutely on track.

2 MR. OHLEMEYER: I'm on track. That is correct.

3 MR. JOHNSON: Good for you.

4 Q. Does -- is it part of Lorillard's business to know  
5 why consumers buy cigarettes?

6 MR. OHLEMEYER: I reiterate my objection.

7 A. It's Lorillard's business to try to determine what  
8 differentiates the purchase of one cigarette versus another.  
9 In other words, Lorillard's business is trying to convince a  
10 potential customer to use their product as opposed to a  
11 competitive one.

12 Q. And what themes did Lorillard advance between 1952  
13 and 1956 to induce smokers to purchase the Kent cigarette?

14 MR. OHLEMEYER: Object to the form of the  
15 question.

16 A. I basically said in my judgment it's a low tar theme.

17 Q. Why is a low tar cigarette advantageous?

18 MR. OHLEMEYER: Object to the form of the  
19 question.

20 A. It's another approach to selling a cigarette. I  
21 think if you can make a point of difference in products, *that*  
22 potentially *x* has appeal. You don't know. I mean, there may  
23 be a niche out there that likes the point of difference that  
24 you're making or not. I mean, you ~~know~~ *x* try it, ~~but I~~  
25 don't --.

89749134

1 Q. Was the point of the -- of a low tar cigarette in  
2 1952 to 1956, namely Kent, to suggest that Kent was a  
3 healthier cigarette than the other cigarettes on the market?

4 MR. OHLEMEYER: Object to the form of the  
5 question. It has been asked and answered four times in the  
6 last three minutes.

7 A. Again, I can only say that I can read the phrase here  
8 and I don't know its intended meaning. I reiterate that I  
9 believe that cigarette was being marketed as a low tar, low  
10 nicotine cigarette to that market niche, whatever it turned  
11 out to be.

12 Q. And the expression that you don't understand is  
13 health protection?

14 MR. OHLEMEYER: Object to the form of the  
15 question.

16 A. I don't understand the meaning of greatest health  
17 protection; what the -- what that means in terms of the  
18 consumer, I have no idea.

19 Q. When Lorillard used that in its advertising in 1954,  
20 what did they intend that the consumer would take that to  
21 mean?

22 MR. OHLEMEYER: Object to the form of the  
23 question.

24 A. I think I have tried to say I don't know.

25 Q. Let me show you another advertisement --

89749135



1 MR. JOHNSON: I'd like that marked Exhibit 12.

2 (Exhibit Number 12 is marked by the reporter.)

3 MR. OHLEMEYER: Give you a continuing objection  
4 to the numbering system.

5 MR. JOHNSON: You got it.

6 (Document to Mr. McElaney.)

7 Q. Let me show you another Kent advertisement from 1954.  
8 You note, Dr. Spears, that that advertisement shows a series  
9 of photographs that purport to be taken in a pharmacy in New  
10 Jersey. Do you see that?

11 MR. OHLEMEYER: Object to the form of the  
12 question.

13 A. I think I would have to read the whole thing to see  
14 whether I agree with that.

15 Q. Well, if you look at the caption of the picture, I  
16 think you'll see the -- particular pharmacy.

17 A. Okay.

18 Q. Does it appear to show a pharmacy?

19 A. Well, it says -- it does. It says the sales person  
20 is calling on a -- a particular establishment which is Davis  
21 Pharmacy.

22 Q. Is there any particular reason why Lorillard chose to  
23 use a pharmacy in its advertisement than any other kind of  
24 business establishment?

25 MR. OHLEMEYER: Object to the form of the

89749136

1 question.

2 A. I would not -- not to my knowledge. A drug store  
3 sells cigarettes like many other outlets.

4 Q. Is there any other reason why they would choose to  
5 portray a pharmacy in their ads other than the fact that a  
6 pharmacy sells cigarettes?

7 MR. CHLEMEYER: Object to the form of the  
8 question. Asked and answered.

9 A. I don't know. I don't know of any other.

10 Q. Is there a reference to health protection in the  
11 larger print at the top of that ad?

12 MR. CHLEMEYER: Object to the form of the  
13 question.

14 A. Yes, in the subheadlines.

15 Q. I believe it says: Gives you the health protection  
16 you need.

17 MR. CHLEMEYER: Same objection.

18 A. No, that's not what it says. It says: You'll see  
19 how to get the health protection you definitely need and the  
20 smoking pleasure you want.

21 Q. How was that phrase concerning getting the health  
22 protection you need designed to stimulate cigarette sales of  
23 Kent cigarettes?

24 MR. CHLEMEYER: Object to the form of the  
25 question.

89749137

1 A. I don't know beyond the statement I made before. I  
2 think it's synonymous with low tar, low nicotine.

3 Q. Did the Kent cigarettes sold between 1952 and 1956  
4 give their consumers health protection?

5 MR. OHLEMEYER: Object to the form of the  
6 question. Excuse me. I'd like to hear the question again.

7 (The last question is read by the reporter.)

8 MR. OHLEMEYER: Again, I will let the witness  
9 answer what he knows, but if you're asking what Lorillard  
10 contends, then I'll object and instruct him not to answer.

11 MR. JOHNSON: Notice the word contend is not in  
12 my question, Mr. Ohlemeyer.

13 MR. OHLEMEYER: I'm well aware of the fact,  
14 Mr. Johnson. Are you asking this witness what he knows or  
15 are you asking the company what it contends?

16 MR. JOHNSON: I am asking this witness who is a  
17 spokesman for the company what the company --. No, I am  
18 asking the witness what I asked the witness. I have asked  
19 the witness the question that is on the record.

20 MR. OHLEMEYER: Well, then, perhaps if we could  
21 have it read.

22 MR. JOHNSON: Are you having difficulty hearing,  
23 Mr. Ohlemeyer?

24 MR. OHLEMEYER: Mr. Johnson, I have asked the  
25 court reporter to read the question. I have asked you to

89749138

1 limit the question to what this witness knows. If you don't  
2 care or if you're not inclined to do so, I will instruct him  
3 not to answer the question and we can move on. If you  
4 insist on being argumentative with me, the witness and  
5 anybody else, we can conclude the deposition. Would you  
6 please let me establish what the question is so that I know  
7 whether it's a proper question for you to ask the witness.

8 MR. JOHNSON: Please read back the question.

9 (The last question is read by the reporter.)

10 MR. OHLEMEYER: And you're refusing to ask the  
11 witness if he knows that. I have heard the question to the  
12 extent you are asking this witness to tell you what  
13 Lorillard contends on that subject. I object and instruct  
14 him not to answer.

15 MR. JOHNSON: I am asking the witness what  
16 Lorillard knows.

17 MR. OHLEMEYER: And what I am saying is what you  
18 are really asking is what Lorillard contends and I am  
19 objecting and instructing him not to answer the question.  
20 Now --

21 MR. JOHNSON: I am asking this witness what the  
22 corporation knows.

23 MR. OHLEMEYER: And I am objecting and  
24 instructing him not to answer. If you would like to ask the  
25 witness what he knows, we could move along.

89749139

1 MR. JOHNSON: The order issued by Judge Newcomer  
2 in this case was --

3 MR. HARDY: Hold on just a minute, Tom, until  
4 they finish this aside.

5 MR. OHLEMEYER: Excuse me. Just a second,  
6 please. Off the record?

7 MR. JOHNSON: No.

8 MR. OHLEMEYER: I object to you spending the time  
9 with this witness sitting here waiting to answer questions  
10 of you reading Judge Newcomer's order back and forth. I am  
11 not going to debate that with you.

12 MR. JOHNSON: You have made speech and speech,  
13 Mr. Ohlemeyer, that I have patiently listened to and I would  
14 request that you not try to obstruct my examination any  
15 further. You have -- we are sitting here doing a deposition  
16 under an order from a Federal Judge that states, quote, Rule  
17 30 (b) (6) requires that Lorillard designate formally a  
18 witness or witnesses who can testify as to actual corporate  
19 knowledge or the knowledge reasonably available to the  
20 corporation. More -- and furthermore, the Court  
21 specifically indicates that if Lorillard chooses to  
22 designate a witness who does not have knowledge and has to  
23 say that they don't know the answer then that itself is an  
24 answer and Lorillard is bound by that answer. Now, you and  
25 I may disagree about what this order means, and as

89749140

1 attorneys, you're going to do the best you can for your  
2 client and I am going to do the best I can for mine, but I  
3 would request that you not obstruct my questioning by  
4 instructing your witness not to answer based on my  
5 understanding of this witness's status, and I will not  
6 reframe the question to conform with your interpretation of  
7 Judge Newcomer's order because I believe it's incorrect.  
8 And I think it should be crystal clear to you that it is my  
9 position that if this witness gives an answer that is I  
10 don't know, that that answer binds Lorillard and that to the  
11 extent that you have deliberately designated a witness who  
12 has no personal knowledge and has intentionally not sought  
13 to acquire the knowledge that the corporation has so that he  
14 can come here and say I don't know, I assume on your advice,  
15 then that I don't know binds the corporation and Lorillard  
16 is stuck with that answer. Now that is my interpretation of  
17 the Court's order. You may have a different interpretation.  
18 We'll all know when the Judge rules if it comes to that.  
19 But I intend to ask this witness questions, and I would  
20 appreciate it if you would not interrupt me repeatedly to  
21 try to put your gloss on my questions.

22 MR. CHLEMEYER: Have you finished?

23 MR. JOHNSON: I have finished.

24 MR. CHLEMEYER: I object to the pending question  
25 and instruct him not to answer it. Move on, please.

89749141

1 MR. JOHNSON: Please note your transcript.

2 Q. In the advertisement that you have before you, is  
3 there -- would you please read the portion in quotes at 4.

4 MR. OHLEMEYER: Object to the form of the  
5 question.

6 A. Kent's filter, he says, is made from material  
7 originally used to purify air breathed by workers in atomic  
8 energy plants, and is far more effective than other  
9 cigarette filters made from crepe paper, cellulose or  
10 cotton.

11 Q. Now, all three ingredients that you've just read were  
12 actually present in the Kent Micronite filter between 1952  
13 and 1956, isn't that right?

14 MR. OHLEMEYER: Object to the form of the  
15 question.

16 A. That is correct.

17 Q. What ingredient was in the Kent filter that is not  
18 listed in that ad?

19 MR. OHLEMEYER: Object to the form of the  
20 question.

21 A. The asbestos.

22 Q. And was asbestos ever used to filter the air in  
23 nuclear power plants?

24 A. I've seen the representation that it was. I can't  
25 attest one way or the other.

89749142

1 Q. Was cotton, cellulose acetate or crepe paper ever  
2 used to filter the air in nuclear power plants?

3 A. I don't -- I don't know about cotton, but I would  
4 think that cellulose derivatives were.

5 Q. However that -- the special ingredient in Kent as  
6 indicated in that advertisement appears to be asbestos,  
7 isn't that right?

8 MR. OHLEMEYER: Object to the form of the  
9 question.

10 A. The special ingredient?

11 Q. Yes.

12 A. I don't see a reference to a special ingredient in  
13 that Number 4.

14 Q. Well, the expression, material, in the sentence  
15 you've just read, what substance does the word material  
16 refer to?

17 A. It says the material used to purify air breathed by  
18 workers in atomic energy plants, so it refers to whatever  
19 those filters were in the atomic energy plants.

20 Q. And in that same sentence, does it appear to exclude  
21 cotton, cellulose and crepe paper?

22 MR. OHLEMEYER: Object to the form of the  
23 question.

24 A. No, I wouldn't say that.

25 Q. You don't think the word material in that sentence

89749143



1 refers to asbestos?

2 MR. OHLEMEYER: Object to the form of the  
3 question.

4 A. I would think it includes it. I don't think it is  
5 specifically asbestos, no. I think material refers to the  
6 entire composition of what was used to filter the air in  
7 atomic energy plants.

8 Q. And why did Lorillard think it was important to tell  
9 its consumers that the products that it put in its filter  
10 were used in atomic energy plants?

11 MR. OHLEMEYER: Object to the form of the  
12 question.

13 A. I don't know the answer to that. I can only  
14 speculate.

15 Q. Do the best you can.

16 MR. OHLEMEYER: Object to the form of the  
17 question.

18 A. I would speculate that atomic energy plants were  
19 considered high tech operations and this would mean it was a  
20 high tech filter.

21 Q. And did Lorillard want to convey to the public that  
22 the Micronite filter was a high tech filter?

23 A. I would say yes and demonstrated that with lower tar  
24 and nicotine.

25 Q. And hopefully that would lead toward selling more

89749144

1 cigarettes, isn't that right?

2 MR. OHLEMEYER: Object to the form of the  
3 question.

4 A. I would think that was the purpose of the  
5 advertising, was to sell cigarettes, sir.

6 Q. Okay.

7 MR. JOHNSON: Mark this, please as the next  
8 exhibit.

9 (Exhibit Number 13 is marked by the reporter.)

10 (Mr. Johnson and Mr. Childs confer.)

11 Q. Let me show you Kent ad from 1952. Did Kent attempt  
12 to specifically appeal to heavy smokers?

13 MR. OHLEMEYER: Object to the form of the  
14 question. Is there an identification on the advertisement  
15 that dates it to 1952?

16 MR. JOHNSON: Sorry. 1956.

17 MR. OHLEMEYER: Same question; same objection.

18 Q. I really can't tell. Certainly no indication in this  
19 thing, date.

20 Q. Well, I can, if necessary, produce the magazine from  
21 which it came from, so I'll ask you to assume that it was in  
22 1956 --

23 A. All right.

24 Q. -- for the purposes of my question. My question to  
25 you is: Did Kent's advertising attempt to appeal to heavy

89749145

1 smokers?

2 MR. OHLEMEYER: Same objection.

3 A. Not in anything you've shown me so far to my  
4 knowledge.

5 Q. Does this ad not state: No wonder people who smoke a  
6 lot choose Kent.

7 MR. OHLEMEYER: Object to the form of the  
8 question.

9 A. I read the statement. What is the question?

10 Q. Did -- was that an attempt by Kent to promote its  
11 product among people who smoked a lot?

12 MR. OHLEMEYER: Object to the form of the  
13 question.

14 A. I don't know, but I could interpret the other way,  
15 that they were -- they were saying that people who smoke and  
16 are experienced, sophisticated people choose Kent. That is  
17 those who -- who know the difference, if you will, or those  
18 who have chosen Kent. Hard to say.

19 MR. JOHNSON: Let's mark this as the next  
20 exhibit.

21 (Exhibit Number 14 is marked by the reporter.)

22 Q. On that same advertisement, please note the passage  
23 that says: Kent is the only cigarette with the Micronite  
24 filter. It gives the high filtration that helps keep your  
25 smoking moderate. Is that an accurate statement,

89749146

1 Dr. Spears?

2 MR. CHLEMEYER: Object to the form of the  
3 question.

4 Q. That high filtration helps keep smoking moderate?

5 MR. CHLEMEYER: Same objection.

6 A. Depends on what they mean by it.

7 Q. What did Kent -- what did Lorillard mean by it?

8 MR. CHLEMEYER: Object to the form of the  
9 question.

10 A. I don't know what the people who wrote these ads  
11 meant by them at that time, obviously. No one knows the  
12 answer to that except the people who authored them.

13 Q. Well, how was that expression part of a campaign to  
14 sell more cigarettes?

15 MR. CHLEMEYER: Object to the form of the  
16 question.

17 A. I think it's another low tar statement stated a  
18 different way.

19 Q. Doesn't that suggest that you can smoke more  
20 cigarettes if you smoke Kent because you'll get less tar in  
21 each cigarette?

22 MR. CHLEMEYER: Object to the form of the  
23 question.

24 A. You could read it that way, yes.

25 Q. And wouldn't that be beneficial to Kent because

897491A7

1 people could -- would feel as if they could smoke more Kents  
2 proportionately than other cigarettes that delivered higher  
3 tar?

4 MR. CHLEMEYER: Object to the form of the  
5 question.

6 A. That's a lot of conjecturing. I think it goes well  
7 beyond the advertising statement.

8 Q. Didn't Kent want -- didn't Lorillard want people to  
9 feel comfortable that they could smoke as many Kents as they  
10 wanted to without any danger to their health?

11 MR. CHLEMEYER: Object to the form of the  
12 question.

13 A. I don't -- I don't think there was ever a question  
14 about health of smoking this cigarette or any other  
15 cigarette from the Lorillard point of view or from my point  
16 of view at this time. I've already said what the position  
17 of the company was in my judgment forward of that time, and  
18 I don't --

19 THE REPORTER: Excuse me.

20 A. I have already said the company's position forward of  
21 this period, and I don't believe it was any different in  
22 that time.

23 Q. Well, at the time that this cigarette was being sold  
24 between '52 and '56, Lorillard also sold an unfiltered  
25 cigarette, Old Gold, isn't that right?

89749148

1 MR. CHLEMEYER: Object to the form of the  
2 question.

3 A. Yes, that's my understanding. Yes.

4 Q. And did Lorillard attempt to promote to the public  
5 that there was any difference with regard to health  
6 consequences of smoking a filtered cigarette as opposed to  
7 an unfiltered cigarette?

8 MR. CHLEMEYER: Object to the form of the  
9 question.

10 A. I don't know.

11 Q. Doctor, I'm going to show you three advertisements  
12 that we will mark 15, 16 and 17 respectively. They come  
13 from the Journal of the American Medical Association and the  
14 -- I believe you will find the volume number up at the top.

15 A. It can't be read.

16 Q. Well I think I can read it.

17 A. Oh, this one I can read, but not the first one.

18 Q. Okay. I will represent to you they're all from the  
19 Journal of the American Medical Association in 1953 and  
20 1954. '52 and '53. Do those advertisements appear to  
21 be --

22 MR. CHLEMEYER: Objection to the form of the  
23 question.

24 THE REPORTER: Excuse me. I lost that question.

25 Q. Doctor, do those advertisements appear to be

89749149

1 specifically tailored to the medical profession?

2 MR. OHLEMEYER: Same objection.

3 A. This one starts out with the word, Doctor, and  
4 talking about the American Medical Association and  
5 physicians, so in that sense, yes. I don't see such a  
6 reference in this one but that cigarettes, Doctor, but that  
7 -- okay. Talking about the same convention, and this one  
8 has a doctor in the headline, yes. Seem to be directed at  
9 doctors, yes.

10 Q. Can you explain to me why Kent was advertising, why  
11 Lorillard was advertising Kent cigarettes in medical  
12 journals?

13 A. No, I can't.

14 Q. Can you give me any reason why they would want to  
15 advertise to doctors as opposed to lawyers or engineers or  
16 plumbers?

17 MR. OHLEMEYER: Object to the form of the  
18 question.

19 A. Can I give you any reason? I can speculate, yes.

20 MR. McELANEY: No speculation about lawyers.

21 Q. Go ahead.

22 MR. OHLEMEYER: Object to the form of the  
23 question.

24 A. Well it appears from these ads that they are trying  
25 -- that they were presenting in written form the results of

89749150

1 the tests, I guess, that they conducted at the convention,  
2 same demonstrations, and it would appear that they were  
3 going to physicians who may not have been in attendance at  
4 those physicians -- at that convention; provide them with  
5 basically the same information.

6 Q. Didn't Lorillard want to encourage doctors to smoke  
7 Kent cigarettes?

8 MR. OHLEMEYER: Object to the form of the  
9 question.

10 A. I don't -- I don't have any information that suggests  
11 that, no.

12 Q. Don't those advertisements suggest that Lorillard  
13 wanted doctors to smoke Kent cigarettes?

14 MR. OHLEMEYER: Object to the form of the  
15 question.

16 A. Well, they seem to be suggesting that they want  
17 physicians or doctors to be aware of these experiments. I  
18 haven't read them in great detail.

19 Q. Don't those advertisements suggest that Lorillard  
20 wanted doctors to recommend Kent cigarettes to their  
21 patients?

22 MR. OHLEMEYER: Object to the form of the  
23 question.

24 A. Again, I don't know what Lorillard wanted at that  
25 time.

89749151



1 Q. Well, Doctor, can you imagine any other purpose for  
2 advertising in a medical journal other than persuading  
3 either doctors to smoke the cigarettes or for doctors to  
4 recommend them to their patients?

5 MR. OHLEMEYER: Object to the form of the  
6 question.

7 A. I don't know what the reason was, and I can only --  
8 as I say, I can -- I can believe from what I see here that  
9 they were trying to provide these physicians with this  
10 information.

11 Q. To what end?

12 MR. OHLEMEYER: Object to the form of the  
13 question.

14 A. That this was a low tar cigarette.

15 Q. Why would that be important to a doctor?

16 MR. OHLEMEYER: Object to the form of the  
17 question.

18 A. Well it's a consumer product. I presume that doctors  
19 should be interested in consumer products and differences  
20 that exist among them.

21 Q. Do you believe --

22 A. But certainly, you know, they would reach their own  
23 conclusions about whatever they were presented.

24 Q. Do you believe that those advertisements were  
25 intended --. Strike that.

89749152

1           Were those advertisements intended to persuade  
2 doctors that Kent cigarettes were a healthier cigarette than  
3 others on the market?

4           MR. OHLEMEYER: Object to the form of the  
5 question.

6 A.       No, I don't believe that. I don't see any reason to  
7 believe that. Here again, you know, as I said before, I  
8 don't know what the people who wrote these had in mind when  
9 they wrote it.

10          MR. JOHNSON: Let's mark those.

11          (Exhibit Numbers 15, 16 and 17 are marked by the  
12 reporter.)

13          (Document to the witness by Mr. Johnson.)

14 Q.       Doctor, show you another advertisement for Kent  
15 cigarettes that appeared in a number of state medical  
16 journals including, but not limited to, the Journal of the  
17 Medical Society of New Jersey in 1954. Does that  
18 advertisement reference health protection?

19          MR. OHLEMEYER: Objection to the form of the  
20 question and the statement preceding the question.

21 A.       Much more protection than another. I don't see the  
22 word health in this ad.

23 Q.       Was -- does the statement, the greatest protection in  
24 cigarette history, appear at the base of that ad?

25 A.       Let's see. Where does it appear?

89749153

1 Q. At the bottom on the right. Pardon me. On the left.  
2 Bottom of the left.

3 MR. JOHNSON: It is warm in here.

4 At the bottom on the right.

5 A. Okay. Yes, greatest protection. Yes.

6 Q. What was the point of this ad?

7 MR. OHLEMEYER: Object to the form of the  
8 question.

9 A. What was the point of the ad.

10 Q. Yes. What was Lorillard trying to accomplish by  
11 placing this ad in a medical journal?

12 MR. OHLEMEYER: Object to the form of the  
13 question.

14 A. I don't know. I don't know what Lorillard was trying  
15 to accomplish at that time by placement of this ad other  
16 than to communicate what I think I have been saying before,  
17 that this was a low tar cigarette.

18 Q. Were they trying to communicate that this cigarette  
19 would provide some form of protection to smokers?

20 MR. OHLEMEYER: Object to the form of the  
21 question.

22 A. I think, as I've said before, you know, my -- my best  
23 interpretation of that would be it's synonymous with low tar  
24 and low nicotine.

25 Q. And if there's low tar and low nicotine, that

89749154

1 provides protection?

2 MR. CHLEMEYER: Object to the form of the  
3 question.

4 A. If they're synonymous, I am saying they're  
5 synonymous, you know. In the body of this, it says: In  
6 continuing and repeated impartial scientific tests, Kent's  
7 Micronite filter consistently proves it takes out more  
8 nicotine and tars than any other filter cigarette, old or  
9 new. And I think that is the basis of the ad.

10 Q. Was removal of tar and nicotine important from a  
11 health standpoint?

12 MR. CHLEMEYER: Object to the form of the  
13 question. Asked and answered.

14 A. In my judgment, no; my personal judgment, no.

15 Q. And Lorillard's judgment?

16 MR. CHLEMEYER: Object to the form of the  
17 question.

18 A. I don't know what Lorillard's judgment was, but I  
19 said I think this statement, greatest protection is  
20 synonymous with tar and nicotine.

21 Q. What impartial scientific testing provided the basis  
22 for that claim in that ad?

23 MR. CHLEMEYER: Object to the form of the  
24 question.

25 A. I don't know other than that's reporting documents

89749155

1 that you have.

2 Q. I'm not sure I understand what your answer -- what  
3 you mean. What documents that I have?

4 A. I believe there are documents that represent a  
5 difference here in tar and nicotine of this cigarette versus  
6 competitive, throughout the advertisements, the  
7 demonstrations that we were looking at before.

8 Q. Are the impartial scientific tests that are alluded  
9 to in that ad the beaker tests that appear in the previous  
10 ads?

11 A. I said I don't know what they're alluding to other  
12 than what I believe is in these documents. I have no other  
13 information. It doesn't reference anything, so I can't tell  
14 you.

15 MR. JOHNSON: Let me be mark this as 18, please.

16 (Exhibit Number 18 is marked by the reporter.)

17 Q. Exhibit Number 19 is an advertisement that appeared  
18 in the Pennsylvania Medical Society as well as a number of  
19 other medical societies. Was that ad attended to appeal to  
20 the general public?

21 MR. CHLEMEYER: Object to the form of the  
22 question and the statement preceding the question.

23 A. Where did it appear?

24 Q. Appeared in the Pennsylvania Medical Society Journal.

25 MR. CHLEMEYER: Object to the form of the

89749156

1 question.

2 A. I can only give you my opinion; I mean, again, I  
3 didn't write the ad. I can't tell you who it was directed  
4 to, but by virtue of the journal in which it appears, I  
5 would say not to the general public.

6 Q. Which portion of the public if not the general  
7 public?

8 A. Any of the scientific community.

9 Q. And did that ad reference a particular scientific  
10 test regarding Kent cigarettes?

11 A. I have to read it. Yes. It represented a particular  
12 test.

13 Q. Particular test involves measurement of drops in skin  
14 temperature, is that correct?

15 MR. OHLEMEYER: Object to the form of the  
16 question.

17 A. That's correct. Surface skin temperature.

18 Q. Was -- from the period 1952 to 1956, were drops in  
19 surface skin temperature an important health concern with  
20 respect to cigarettes?

21 MR. OHLEMEYER: Object to the form of the  
22 question.

23 A. Would you restate that, please?

24 Q. In the period 1952 to 1956, was the issue of drop in  
25 skin temperature when smoking cigarettes an important health

89749157

1 concern?

2 MR. OHLEMEYER: Same objection.

3 A. I don't know. It's certainly not -- not much -- not  
4 much of a health concern today, and I don't know all of the  
5 historical background in terms of the -- of skin temperature  
6 measurements at that time to make a judgment.

7 Q. What were the principal health concerns with regard  
8 to cigarettes in between 1952 and 1956?

9 MR. OHLEMEYER: Object to the form of the  
10 question.

11 A. Are you talking about the scientific community?

12 Q. Yes.

13 A. The only thing I am aware of are the publications  
14 that existed at that time in the scientific community, one  
15 of which was a mouse skin painting experiment.

16 Q. Which purported to demonstrate the development of  
17 cancer, isn't that correct?

18 MR. OHLEMEYER: Object to the form of the  
19 question.

20 A. Tumors, let's say. I have to read the author's  
21 conclusions before I could be more accurate than that.

22 MR. JOHNSON: Let's mark this as the next  
23 exhibit, please.

24 (Exhibit Number 20 is marked by the reporter.)

25 Q. Does -- I am showing you another advertisement that

89749158

111

1 was in a state medical journal. Did this Kent ad attempt to  
2 convey the notion that Kents are somehow fundamentally  
3 different than other cigarettes?

4 MR. OHLEMEYER: Object to the form of the  
5 question.

6 A. Conveys the message that Kent has a superior filter,  
7 yes.

8 Q. And is that what made Kent fundamentally different  
9 than any other cigarette on the market between '52 and '56?

10 MR. OHLEMEYER: Object to the form of the  
11 question.

12 A. Well, the advertisements state that it was a blended  
13 tobacco and the filter, the people who developed considered  
14 those all to be factors in the consumer acceptance of that  
15 product.

16 Q. Wasn't the only fundamental difference between Kent  
17 and other filter cigarettes on the market the fact that the  
18 Kent filter contained asbestos?

19 MR. OHLEMEYER: Object to the form of the  
20 question.

21 A. I don't believe that to be true.

22 Q. Did any other filter cigarette on the market contain  
23 asbestos?

24 MR. OHLEMEYER: Object to the form of the  
25 question. Asked and answered.

89749159



1 A. Not to my knowledge, but I believe there are other  
2 differences between Kent cigarette and other cigarettes on  
3 the market other than that filter.

4 Q. What were they?

5 A. Tobacco.

6 Q. The tobacco used in the Kent cigarette was  
7 fundamentally different than that used in other cigarettes?

8 MR. OHLEMEYER: Object to the form of the  
9 question.

10 A. Depends on your term fundamentally, but I believe  
11 they were different, yes.

12 Q. Fundamentally different?

13 MR. OHLEMEYER: Object to the form of the  
14 question?.

15 A. Define fundamentally and I'll answer it.

16 Q. How did Lorillard mean that word when they used it in  
17 their ad?

18 MR. OHLEMEYER: I object to the form of the  
19 question. Mr. Johnson, you are badgering the witness.

20 MR. JOHNSON: I am absolutely not badgering the  
21 witness.

22 A. ~~X~~ Let me answer it this way: I believe that if you  
23 analyzed for nicotine, for example, ~~that~~ Kent tobacco blend,  
24 ~~that~~ you would find it to be different from other cigarettes  
25 on the market at that time.

89749160

1 Q. In what way?

2 MR. OHLEMEYER: Object to the form of the  
3 question. Hasn't he just told you?

4 MR. JOHNSON: No, he hasn't.

5 Q. In what way would it be different?

6 A. I believe it would be lower.

7 Q. That the tobacco was selected in order to have a  
8 lower tar and nicotine content?

9 A. Yes, I believe that.

10 Q. Can you point me in the advertisement, Exhibit 20,  
11 any place in that advertisement where there's a reference to  
12 a difference in the tobacco itself as opposed to the filter?

13 MR. OHLEMEYER: Object to the form of the  
14 question.

15 MR. McELANEY: Isn't that a bit argumentative?  
16 We have been doing this for over three hours. I will object  
17 to the continuous argumentative questions. It really is  
18 unfair to those of us who must sit here, to say nothing of  
19 the poor witness.

20 A. The answer is, no, I cannot, but you showed me an ad  
21 earlier where there's a definite reference to the blend.

22 Q. However this ad --

23 A. This ad does not contain that.

24 Q. Thank you.

25 MR. JOHNSON: Mark this 21, please.

89749161

1 (Exhibit Number 21 is marked by the reporter.)

2 Q. Let me show you an advertisement that appeared in the  
3 Journal of the American Medical Association, I believe, in  
4 late 1952.

5 MR. OHLEMEYER: Object to the form of the  
6 question. Actually I withdraw that objection. You said I  
7 believe it appeared.

8 Q. Doctor, did Lorillard make special arrangements to  
9 provide Kent cigarettes to physicians in those cities where  
10 Kent cigarettes were not readily available?

11 MR. OHLEMEYER: Object to the form of the  
12 question.

13 A. I don't know.

14 Q. Would you look at that box in the middle of the page  
15 at the bottom?

16 A. Yes.

17 Q. Read that to yourself, please.

18 A. All right.

19 Q. Does the information in that box suggest that  
20 Lorillard was prepared to make special arrangements to  
21 provide physicians with supplies of Kents if they were not  
22 readily available in their own cities?

23 MR. OHLEMEYER: Object to the form of the  
24 question.

25 A. That is what it says.

89749162

1 MR. POUL: What exhibit is that?

2 MR. JOHNSON: 21.

3 Q. Did Lorillard ever make special arrangements to  
4 provide Kent cigarettes to other occupational groups other  
5 than physicians in cities where they could not easily obtain  
6 Kents?

7 MR. OHLEMEYER: Object to the form of the  
8 question.

9 A. Not to my knowledge.

10 Q. How would it advance Lorillard's economic interest to  
11 make special arrangements to provide cigarettes to doctors?

12 MR. OHLEMEYER: Object to the form of the  
13 question.

14 A. Other than the sales of the cigarettes and providing  
15 scientific group with information, and the product, I don't  
16 know.

17 Q. Is that an advertisement an attempt to appeal to the  
18 scientific side of the medical profession so to speak?

19 MR. OHLEMEYER: Object to the form of the  
20 question.

21 MR. McELANEY: I am sorry, I didn't hear, the  
22 scientific side of what?

23 MR. JOHNSON: The medical profession.

24 A. Whatever that means. I -- what's the other side?

25 MR. FRAZIER: Off the record.

89749163

1 (The proceedings resumed.)

2 Q. Does the ad contain references to scientific journals  
3 in the advertisement?

4 A. I am going to have to read it.

5 Q. Take a look at the lower right hand side.

6 A. References cited. Is that what you are referring to?

7 Q. Yes.

8 A. Yes, it cites Journal of American Medical  
9 Association, Manual of Pharmacology, but what they're  
10 referring to, I have not yet discovered.

11 Q. Did Lorillard normally make a practice in the period  
12 1952 to 1956 of including citations to medical articles in  
13 its advertisements?

14 MR. OHLEMEYER: Object to the form of the  
15 question.

16 A. I don't know.

17 Q. What purpose --

18 A. Let me find out what these references refer to.

19 Q. Certainly.

20 A. I can't seem to find the --. They're referring to  
21 the -- to some scientific publications that are supporting  
22 the statements that they make. Okay.

23 Q. My question to you, Doctor, was: What economic  
24 purpose did it serve Lorillard to cite to scientific  
25 articles in its advertising?

89749164

1 MR. OHLEMEYER: Object to the form of the  
2 question.

3 A. I have no idea other than it was consistent with an  
4 ad that if you're going to make a statement to a scientist,  
5 you better reference where it comes from.

6 Q. Why did --

7 A. I don't think there's any economic justification  
8 per se for citing the reference.

9 Q. Why did Lorillard want to pitch Kent cigarettes to  
10 scientist?

11 MR. OHLEMEYER: Object to the form of the  
12 question.

13 A. I think that they were trying to, and, I'm, you know,  
14 again, supposition on my part, but I think they were trying  
15 to explain to scientists that they had a high tech filter, a  
16 different product, high tech product.

17 Q. Were they trying to persuade scientists that it was a  
18 better filter than any on the market?

19 MR. OHLEMEYER: Object to the form of the  
20 question.

21 A. I don't think there is any question about that in  
22 terms of tar and nicotine.

23 MR. OHLEMEYER: Object to the form of the  
24 question.

25 Q. Were they trying to persuade scientists that it was a

89749165

1 safer product?

2 MR. OHLEMEYER: Object to the form of the  
3 question. Asked and answered.

4 A. I think I have answered it numerous times.

5 Q. And the answer is no?

6 A. But again, I said I don't think there was -- to me,  
7 this is not a health claim. I find it synonymous with low  
8 tar and nicotine.

9 Q. Okay.

10 MR. JOHNSON: Why don't we take a break at your  
11 counsel's request.

12 (5:20 p.m. - Pause in the proceedings.)

13 (5:25 p.m. - The proceedings resumed.)

14 Q. Dr. Spears, did Lorillard ever make special  
15 arrangements to provide Kent cigarettes to teachers?

16 MR. OHLEMEYER: Object to the form of the  
17 question.

18 A. I don't know.

19 Q. Did they ever make special arrangements to provide  
20 Kent cigarettes to scientists other than doctors?

21 MR. OHLEMEYER: Same objection.

22 A. Are we talking about for experimental purposes or  
23 other purposes?

24 Q. No, for commercial purposes.

25 A. I don't know.

89749166

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1 Q. And I have been provided with a document that  
2 purports to be generated by Young and Rubicam, an  
3 advertising agency for Lorillard in December of 1956. There  
4 is a description of the history of Kent advertising  
5 beginning at Page 1 of that document. The -- they stated in  
6 that particular document that when Kent entered the filter  
7 field, it entered it with an extremely strong advertising  
8 based on health protection claims as demonstrated with the  
9 smoke test which references the advertisement with the  
10 beakers. Do you remember that particular advertisement?

11 A. Yes.

12 Q. Do you believe it would be proper to characterize  
13 that advertising as based on health protection claims?

14 MR. OHLEMEYER: Object to the form of the  
15 question; move to strike the paragraph preceding the  
16 question about the beaker test.

17 A. As I say, I find that synonymous with low tar and  
18 nicotine.

19 Q. That low tar and nicotine is synonymous with health  
20 protection claims?

21 A. Yes. I think they're using it that way.

22 Q. And in that report by Young and Rubicam, they  
23 describe that one of the reasons for Kent's success,  
24 particularly in 1953, was in the alarm that rose in the fall  
25 of that year over a possible connection with cigarette

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1 smoking and lung cancer. Now, is it your understanding that  
2 one of the reasons why Kent sold cigarette -- a lot of  
3 cigarettes in 1953 was because there was some public concern  
4 over a connection between health smoking and lung cancer?

5 MR. CHLEMEYER: Object to the form of the  
6 question. Continue my objection to the procedure whereby  
7 you are cross-examining the witness with a document you  
8 didn't show him.

9 A. I don't know. To me that's supposition on anybody's  
10 part.

11 Q. Did --

12 A. Let me explain. I don't think anybody knows today  
13 why cigarettes, why one brand sells better than another or  
14 why one can be successfully introduced and the other isn't.  
15 What is said is largely supposition.

16 Q. Do you think that sales of Kent were influenced  
17 positively by publicity over the dangers of smoking?

18 MR. CHLEMEYER: Object to the form of the  
19 question.

20 A. I have no idea.

21 Q. Do you believe that Kent advertising from 1952 to  
22 1953 was designed to capitalize on public concern over the  
23 supposed health hazards of cigarette smoking?

24 MR. CHLEMEYER: Object to the form of the  
25 question. Are you still reading from a document that you

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1 won't show the witness?

2 MR. JOHNSON: No, I'm not.

3 MR. CHLEMEYER: Okay. Thank you.

4 A. I don't know.

5 Q. Have you seen any document that would suggest to you  
6 that Kent was attempting to capitalize on the public's  
7 concern with health in order to promote Kent cigarettes?

8 MR. CHLEMEYER: Object to the form of the  
9 question.

10 A. I don't know of any document that would reach --  
11 allow me to reach that conclusion, no.

12 You know, the reason people -- the way people  
13 advertise and so forth, it's hard to look at an  
14 advertisement and say why was this done in this way; what  
15 was the significance behind it and so forth, and I've said  
16 before, I think to me the constant theme in all of this is  
17 low tar high tech filter.

18 Q. And in your mind, low tar is synonymous with health  
19 protection?

20 MR. CHLEMEYER: Excuse me. Object to the form of  
21 the question.

22 A. I think they have used it that way.

23 MR. CHLEMEYER: Mr. Johnson, he told you that the  
24 drafters of that document used it that way.

25 MR. JOHNSON: No.

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1 MR. CHLEMEYER: He did not tell you that that  
2 was --

3 MR. JOHNSON: What he said he said.

4 MR. CHLEMEYER: Then ask him the question; let  
5 him tell you what he means.

6 MR. JOHNSON: I am trying to.

7 Q. In your mind, is low tar synonymous with health  
8 protection?

9 A. I think they have used it that way. In my mind, it  
10 is not.

11 Q. But they, meaning the people who advertised for  
12 Lorillard.

13 MR. CHLEMEYER: Object to the form of the  
14 question.

15 A. I am saying whoever wrote that document, my  
16 supposition is that they used low tar, low nicotine  
17 synonymous with their statements of protection or health or  
18 high tech filter in a -- different phrases are used in  
19 different things I have seen, but they're only -- to me,  
20 they're all being supported by a low tar filter.

21 Q. In 1954, was Kent required to revise any of its  
22 advertising based on restrictions imposed on it by the  
23 Federal Trade Commission?

24 MR. CHLEMEYER: Object to the form of the  
25 question.

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1 A. I don't know.

2 Q. In 1954, did Kent find out that its original claims  
3 regarding most effective filter were inaccurate?

4 MR. CHLEMEYER: Object to the form of the  
5 question.

6 A. I'm not aware of that.

7 Q. Let me phrase it a little differently. Did Kent find  
8 out in 1954 that it could no longer accurately claim that  
9 its filter was superior in filtration?

10 MR. CHLEMEYER: Object to the form of the  
11 question.

12 A. I remember some data that suggested there wasn't as  
13 large a difference as there had been earlier point, but I  
14 don't know whether that -- beyond that, that's all I recall.

15 Q. Did -- did Kent advertise at one point when it had  
16 asbestos in the cigarette based on a voice of wisdom theme?

17 A. I don't know.

18 Q. Did Kent ever try to convey to the public that it  
19 would be a wise decision to take up smoking Kent cigarettes?

20 MR. CHLEMEYER: Excuse me. I didn't hear the  
21 question. I'm sorry.

22 Q. Did Kent ever try to convey to the public that it  
23 would be a wise decision to take up smoking Kent cigarettes?

24 MR. CHLEMEYER: Object to the form of the  
25 question.

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1 A. I'm not familiar with that theme.

2 Q. When Kent removed asbestos from its cigarette, did it  
3 notify the public that it had changed the filter as soon as  
4 it did change the filter?

5 MR. OHLEMEYER: Object to the form of the  
6 question.

7 MR. JOHNSON: You know, I think that is a bad  
8 question.

9 Q. According to the records that I have been provided,  
10 Kent apparently removed the asbestos from the filter in May  
11 of 1956. Is that your understanding of when it was done?

12 MR. OHLEMEYER: Object to the form of the  
13 question.

14 A. 1956. I don't remember the month.

15 Q. Was there a period of time when the filter was  
16 different but Kent did not advise the public that the filter  
17 was different?

18 MR. OHLEMEYER: Object to the form of the  
19 question.

20 A. I don't know of any -- I'm not aware of any notices  
21 to the public that the filter was changed in 1956, if that's  
22 the question.

23 Q. Did -- didn't Kent wait until -- didn't Lorillard  
24 wait until 1957 before it announced publicly that it had a  
25 new filter?

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1 MR. CHLEMEYER: Object to the form of the  
2 question.

3 A. I don't know.

4 Q. Can you any think of any reason why Kent would  
5 withhold the information from the public that they were  
6 using a new filter?

7 MR. CHLEMEYER: Object to the form of the  
8 question.

9 A. No, I cannot think of any reason.

10 Q. Was --

11 A. I can think of a reason. May not have wanted their  
12 competitors to know they changed the product.

13 Q. When the Kent was originally introduced, was it  
14 presented to the public as a medicinal-like product?

15 MR. CHLEMEYER: Object to the form of the  
16 question.

17 A. Not to my knowledge. Medicinal has the context of  
18 being a medication. I am not aware of it.

19 Q. Would your answer --

20 MR. McELANEY: Mr. Johnson, could I ask -- are  
21 you reading from a Young and Rubicam report and asking him  
22 whether he agrees with certain assertions made in there; is  
23 that what this is?

24 MR. JOHNSON: No. Medicinal-like is not in that  
25 report.

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1 MR. McELANEY: You made that up?

2 MR. JOHNSON: No, I didn't make it up.

3 MR. OHLEMEYER: I join Mr. McElaney's objection  
4 and your continual use of a document in an attempt to  
5 cross-examine the witness improperly before you establish  
6 that he's either seen it or adopts the supposed prior  
7 inconsistent statement or has made some sort of statement to  
8 contradict it. It's just not proper and it's not fair.

9 MR. JOHNSON: Well, I disagree with what you have  
10 said, but in this particular situation, I really have no  
11 problem in letting the witness read portion of the report  
12 that --

13 (Document to the witness.)

14 -- I was asking about. That is Page 15 of the Young  
15 Rubicam report in 1957. It's Bates number 307616. Now, you  
16 want to read that entire page to yourself there.

17 A. Okay. I read it.

18 Q. Dr. Spears, according to answers to interrogatories  
19 provided by your counsel, Young and Rubicam was the  
20 advertising agency employed by Lorillard between, I believe,  
21 1952 and 1958 to market the Kent cigarette. Did Lorillard  
22 spend its advertising dollars as carefully as they were able  
23 to?

24 MR. OHLEMEYER: I object to the form of the  
25 question.

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1 A. I have no idea.

2 Q. Did Lorillard during that period use care in seeing  
3 that its advertising dollars were spent most effectively?

4 MR. OHLEMEYER: Same objection.

5 A. I'm sorry. I can't know that. I have no  
6 information.

7 Q. The -- what was their policy with respect to  
8 expenditure of advertising dollars?

9 A. I don't know what their policy was in terms of  
10 advertising dollar volume.

11 Q. Do you see that in this portion of the Young and  
12 Rubicam report, it indicates that: When Kent was originally  
13 introduced and up until two months ago, it was a cigarette  
14 conceived as a quasi medicinal product, a high priced  
15 specialty aimed at a very thin market?

16 A. I read that.

17 Q. Okay. Now, was -- was the Kent cigarette conceived  
18 as a quasi medicinal product?

19 MR. OHLEMEYER: Object to the form of the  
20 question. It has been asked and answered.

21 A. According to this document, it was. But, again, to  
22 me, this is written in typical advertising guru's language.  
23 They like to frame everything in some sort of a niche, and  
24 they choose their words then to have special meaning to  
25 them, I think, and not the same meaning I would have of a

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1 medicinal product. I mean, I can't imagine Kent cigarettes  
2 being conceived as a medicinal product.

3 Q. Did Lorillard intend that the public see Kent as a  
4 quasi medicinal product?

5 MR. CHLEMEYER: Object to the form of the  
6 question; asked and answered.

7 A. Again, I don't know what Lorillard -- Lorillard being  
8 the advertising people, so forth, at that time, perceived.  
9 I can't crawl inside their mind, but, to me, it's almost  
10 inconceivable that anyone would think of it as a medicinal  
11 product.

12 Q. So that phrase about describing it as a quasi  
13 medicinal product is just wrong.

14 MR. CHLEMEYER: Object to the form of the  
15 question.

16 A. I don't even know what it means. I don't even know  
17 what it means. I mean, to me, again, I think it's another  
18 buzz word for low tar and nicotine.

19 Q. In 1952 to 1956, did Lorillard believe that  
20 advertising worked --

21 MR. CHLEMEYER: Object to the form of the  
22 question.

23 Q. -- in selling the product?

24 MR. CHLEMEYER: Same objection.

25 A. I assume they believed it had a role in selling a

89749176

1 product, sure.

2 Q. Was Kent cigarette, to finish that sentence that we  
3 were just talking about, was it conceived as a specialty  
4 product?

5 MR. CHLEMEYER: Object to the form of the  
6 question.

7 A. Again, I think what is meant by specialty is it -- it  
8 was different from all other cigarette brands in that it was  
9 higher priced; it obviously didn't have a very high share of  
10 the market, and I think that's the reference to the thin  
11 market.

12 Q. Which portion of the market was it intended to appeal  
13 to?

14 MR. CHLEMEYER: Object to the form of the  
15 question; asked and answered.

16 A. I don't know what it was intended to appeal to. What  
17 it says here is it's found acceptance among the higher  
18 social and economic levels.

19 Q. Is that your understanding of where it found  
20 acceptance?

21 MR. CHLEMEYER: Objection.

22 A. I can only read what you read. I don't know beyond  
23 this.

24 Q. Well --

25 A. What's in the document, that's all I know.

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1 Q. Is it -- that your understanding of where Kent found  
2 acceptance during the first four years of its existence?

3 MR. CHLEMEYER: Object to the form of the  
4 question. Mr. Johnson, I think he's answered it.

5 A. It says what it says and it says were found initially  
6 among people in higher socioeconomic -- higher social and  
7 economic levels customers were found.

8 Q. Is that statement about who bought Kent cigarettes  
9 true?

10 MR. CHLEMEYER: Object to the form of the  
11 question. You are badgering the witness.

12 MR. JOHNSON: No.

13 A. I don't know whether it is true or not. Somebody  
14 wrote it.

15 Q. Did Kent know -- did Lorillard know what sorts of  
16 people were buying its cigarettes between 1952 and 1956?

17 A. I imagine they had some view on it. Whether it was  
18 right or wrong and how accurate it was, I don't know.

19 Q. Was that one of the functions that the advertising  
20 agency was supposed to accomplish?

21 MR. CHLEMEYER: Object to the form of the  
22 question.

23 A. I don't know. It may have been or it may have been  
24 accomplished -- it may have been the objective of people in  
25 house.

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1 Q. Were there any shortcomings in the product that  
2 tended to make it less saleable to the public --

3 MR. OHLEMEYER: Object to the form.

4 Q. -- up until 1957?

5 MR. OHLEMEYER: Object to the form of the  
6 question.

7 A. I think that I said to you last -- at the last  
8 session that I believed this product had a very high  
9 pressure drop. That coupled with the high price I think  
10 made it less saleable to the public.

11 Q. Do you remember I asked you a few questions a few  
12 minutes ago about the restrictions by the Federal Trade  
13 Commission?

14 MR. OHLEMEYER: Object to the form of the  
15 question.

16 Q. Just trying to direct your attention to something.

17 A. Yes, I remember that.

18 Q. Okay. Let me show you Page 4 of that same Young and  
19 Rubicam report.

20 (Document to the witness.)

21 A. This is the advertising?

22 Q. Agency report for Lorillard, yes. Would you read the  
23 text at the bottom of that to yourself, please?

24 A. Okay.

25 Q. According to the Young and Rubicam report, there were

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1 restrictions imposed by the FTC, is that correct?

2 A. That's correct.

3 Q. And does it reference in Exhibit B with respect to  
4 specific deletions from Kent ads?

5 A. Yes, it does. It says Appendix B contains a  
6 photostat of an advertisement with crossed out copy, showing  
7 claims which we were required to remove.

8 Q. Let me show you Appendix B. In fact, wasn't  
9 Lorillard required to remove all the health protection  
10 claims from its advertising by the FTC as is depicted in  
11 Exhibit B?

12 MR. OHLEMEYER: Object to the form of the  
13 question.

14 A. The -- certainly, the -- this ad crosses out those  
15 claims, yes.

16 Q. And if what is stated in the Young and Rubicam report  
17 was true about the FTC regulation, that substantially  
18 changed what Kent was allowed to put in its advertising,  
19 isn't that right?

20 MR. OHLEMEYER: Object to the form of the  
21 question.

22 A. Well, I really haven't looked at any advertising  
23 beyond this point, but yes, it was, with respect to this ad  
24 it certainly altered it.

25 Q. And have you ever compared advertising before 1954

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1 with that after 1954 to see whether there was a change in  
2 the degree to which the health issue was raised?

3 MR. OHLEMEYER: Object to the form of the  
4 question.

5 A. No, I haven't.

6 Q. Do you have any reason to doubt that, in fact, there  
7 was changes in the Kent advertising based on federal  
8 regulation?

9 MR. OHLEMEYER: Object to the form of the  
10 question.

11 A. I have no reason to doubt it. I have no information  
12 other than these documents.

13 Q. But you have no reason to doubt the information that  
14 Young and Rubicam put in that report --

15 MR. OHLEMEYER: Object to the form of the  
16 question.

17 Q. -- referencing the appendix.

18 MR. OHLEMEYER: Excuse me. Object to the form of  
19 the question.

20 A. No, I have no reason to doubt it.

21 MR. JOHNSON: I'd like to make a copy of this so  
22 I don't have to destroy my document and mark these two  
23 pages. At my partner's suggestion, I'm going to mark the  
24 entire document.

25 MR. OHLEMEYER: Excuse me. Off the record.

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